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Class No. 322.91

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# **PRACTICE AND PROCEDURE**

**OF THE**

## **GOVERNMENT OF INDIA**





## PREFATORY NOTES.

Since the publication of the last edition of this compilation in 1913, the statutory enactments relating to the Government of India have, with some exceptions, been consolidated by the Government of India Act, 1915 (5 & 6 Geo. 5, c. 61), which has itself been amended by the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5, c. 37). The rules for the conduct of business of the Government of India have been amended, important modifications have been made in the rules for the conduct of Legislative business and for the discussion of the Annual Financial Statement in the Legislative Council of the Governor General, and the instructions to Local Governments regarding legislation have been revised, amplified and re-issued. These changes in the law and in the rules have necessitated the preparation of a new edition.

The Government of India Act, 1915, has been printed as amended by the Government of India (Amendment) Act, 1916, and the latter Statute has also been included. All rules contained in the present volume have been printed as amended up to date.

In view of the fact that the Indian Councils Acts of 1861, 1869, 1871, 1874, 1892 and 1909, and the Government of India Acts of 1865, 1869, 1870 and 1912 were repealed and re-enacted so recently as 1915, and that there are references to some of them throughout this volume, those Acts have been printed in an Appendix for purposes of ready reference.

The Appendices to the last edition have been retained, being brought up to date, where necessary ; and three new Appendices, *i.e.*, Nos. I, IV and V, have been added. The forms in Appendix XII have been revised.

This edition may be regarded as a provisional one pending the issue of a revised edition which will be prepared after the passing by Parliament of an Act to give effect to the proposed reforms.

S. C. GUPTA,

*Legal Assistant, Legislative Department.*

SIMLA ;

*The 2nd April, 1919.*



# PRACTICE AND PROCEDURE

## OF THE

# GOVERNMENT OF INDIA.

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## THE GOVERNMENT OF INDIA ACT, 1915.

(5 & 6 Geo. 5, Ch. 61.)

[ *N. B.*—The marginal references in square brackets indicate the enactments which have been repealed and re-enacted.]

An Act to consolidate enactments relating to the government of India.

[29th July, 1915.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

### PART I.

#### HOME GOVERNMENT.

##### *The Crown.*

[Govt. of India Act, 1858, ss. 1, 2.] 1. The territories for the time being vested in His Majesty in India are governed by and in the name of His Majesty, the King-Emperor of India, and all rights which, if the Government of India Act, 1858, had not been passed, might have been exercised by the East India Company in relation to any territories, may be exercised by and in the name of His Majesty as rights incidental to the government of India.

See *Ilbert*, 1st Edition, p. 571, for the Queen's Proclamation, whereby Her Majesty announced the assumption of the Government of India by the Crown, in the following terms :—

“Whereas, for divers weighty reasons, we have resolved, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in Parliament assembled, to take upon ourselves the government of the territories in India, heretofore administered in trust for us by the Honourable East India Company ;

Now, therefore, we do by these presents notify and declare that, by the advice and consent aforesaid, we have taken upon ourselves the said government.”

His Majesty's title as Emperor of India is authorised by the Royal Titles Act, 1876 (39 & 40 Vict., c. 10) and the Royal Titles Act, 1901 (1 Edw. 7, c. 15).

As to the introduction of Crown Law by sections 1 and 2 of the Government of India Act, 1858, see *Chalmer's Minutes* No. 15 (1890), No. 35 (1897); *Chalmer's* edition of the *General Clauses Act, 1897* (*X of 1897*), note on section 3 (23); also *Ilbert*, note to section 36, *Digest*. See also cases cited under section 32 *post* and notes to section 35, *Ilbert's Digest*. For observations on the position of the Company's government in regard to the prerogative see *Peacock: Minutes* No. 3, paras. 14-21 (1852). In such matters as *escheats* the Statute of 1858 gives the Crown only the same rights as the East India Company previously possessed: *Gridkari Lal Roy v. The Bengal Government* (1868), 12 Moore I. A. 448.

As to the application in India of the maxim that the Crown is not bound by an enactment unless expressly named therein, see *Erle Richards' Minutes*, No. 95 (1907). See also Leg. Dep. U. O. 421 of 1917.

As to whether the prerogative of *pardon* had been delegated to the Governor General, see *Stokes' Minutes*, No. 12 (1878); *Ilbert's Minutes*, No. 32 (1885); also Leg. Dep. U. O. No. 242 of 1896.

It was, however, decided in 1914 that in any future Royal Warrant appointing a Governor General of India [*cf. s. 34, post*], a clause would be inserted to delegate to him the power of exercising the prerogative of the Crown to pardon—see Secretary of State's despatch No. 110, Public, dated 10th July, 1914 (Legislative Department unofficial No. 426 of 1914). Such a clause was accordingly inserted in the Royal Warrant appointing Lord Chelmsford in 1915.—See Appendix V, *post*.

As to Indian legislation affecting the prerogative, see s. 84, *post*.

### *The Secretary of State.*

The Secretary of State.

2. (1) Subject to the provisions of this Act, the Secretary of State has and performs all such or the like powers and duties relating to the government or revenues of India, and has all such or the like powers over all officers appointed or continued under this Act as, if the Government of India Act, 1858, had not been passed, might or should have been exercised or performed by the East India Company, or by the Court of Directors or Court of Proprietors of that Company either alone or by the direction or with the sanction or approbation of the Commissioners for the affairs of India, in relation to that government or those revenues and the officers and servants of that Company, and also all such powers as might have been exercised by the said Commissioners alone. [Govt. of India Act, 1858, s. 3.]

(2) In particular, the Secretary of State may, subject to the provisions of this Act, superintend, direct and control all acts, operations and concerns which relate to the government or revenues of India, and all grants of salaries, gratuities and allowances, and all other payments and charges, out of or on the revenues of India. [Govt. of India Act, 1858, s. 25.]

(3) There shall be paid out of the revenues of India to the Secretary of State and to his Under Secretaries, respectively, the like yearly salaries as may for the time being be [Govt. of India Act, 1858, s. 6.]

paid to any other Secretary of State and his Under Secretaries, respectively.

*See Ilbert, notes to s. 2, Digest.*

As to control by the Secretary of State over expenditure in India, *see Scoble's Minutes*, No. 108 (1889). *See also sections 20 to 27, post.*

As to the control of the Secretary of State and its limitation by usage, *see Leg. Dep. U. O. 795 of 1905, 505 of 1910.*

As to certain salaries and allowances, *see s. 85, post.*

The power conferred by *sub-section (2)* is supplemented by *s. 33, post.*

### *The Council of India.*

3. (1) The Council of India shall consist of such number of members, not less than ten and not more than fourteen, as the Secretary of State may determine. The Council of India

(2) The right of filling any vacancy in the Council shall be vested in the Secretary of State.

(3) Unless at the time of an appointment to fill a vacancy in the Council nine of the then existing members of the Council are persons who have served or resided in British India for at least ten years, and have not last left India more than five years before the date of their appointment, the person appointed to fill the vacancy must be so qualified.

(4) Every member of the Council shall hold office, except as by this section provided, for a term of seven years.

(5) The Secretary of State may, for special reasons of public advantage, re-appoint for a further term of five years any member of the Council whose term of office has expired. In any such case the reasons for the re-appointment shall be set forth in a minute signed by the Secretary of State and laid before both Houses of Parliament. Save as aforesaid, a member of the Council shall not be capable of re-appointment.

(6) Any member of the Council may, by writing signed by him, resign his office. The instrument of resignation shall be recorded in the minutes of the Council.

(7) Any member of the Council may be removed by His Majesty from his office on an address of both Houses of Parliament.

(8) There shall be paid to each member of the Council out of the revenues of India the annual salary of one thousand pounds.

*See Ilbert, notes to s. 3, Digest.*

[Govt. of India Act, 1859, s. 7; Council of India Act, 1907, s. 1.]

[Govt. of India Act, 1869, s. 1.]

[Govt. of India Act, 1858, s. 10; Council of India Act, 1907, s. 2.]

[Govt. of India Act, 1859, s. 2; Council of India Act, 1907, s. 4.]

[Govt. of India Act, 1869, ss. 2, 3.]

[Govt. of India Act, 1869, s. 6.]

[Govt. of India Act, 1858, s. 11.]

[Govt. of India Act, 1858, s. 13; Council of India Act, 1907, s. 3.]



The word "British" where it occurred for the second time in *subsection (3)* was repealed by the Government of India (Amendment) Act, 1916, Sch. I.

The Secretary of State presides over the Council of India, but is not a "member" thereof—see ss. 4, 7, *post*.

As to "an address of both Houses of Parliament," see *May's Parliamentary Practice*, 11th Edition, pp. 452 to 457.

Seat in  
Council dis-  
qualification  
for Parlia-  
ment.

4. No member of the Council of India shall be capable of sitting or voting in Parliament. [Govt. of India Act, 1858, s. 12.]

This restriction applies to seats in both Houses of Parliament—see *Ilbert*, note to s. 4, *Digest*.

Duties of  
Council.

5. The Council of India shall, under the direction of the Secretary of State, and subject to the provisions of this Act, conduct the business transacted in the United Kingdom in relation to the government of India and the correspondence with India; but every order or communication sent to India, and every order made in the United Kingdom in relation to the government of India under this Act, shall be signed by the Secretary of State. [Govt. of India Act, 1858, s. 19.]

The provision as to orders and communications applies only to official orders and communications, see *Ilbert*, note (a) to s. 15, *Digest*. It does not include the sending of letters by the Under Secretary of State in purely official and unimportant matters.

"Subject to the provisions of this Act"—this refers to ss. 12, 13, *post*.

Powers of  
Council.

6. (1) All powers required to be exercised by the Secretary of State in Council, and all powers of the Council of India, shall be exercised at meetings of the Council at which not less than five members are present. [Govt. of India Act, 1858, s. 22.]

(2) The Council may act notwithstanding any vacancy in their number.

President and  
Vice-Presi-  
dent of  
Council.

7. (1) The Secretary of State shall be the President of the Council of India, with power to vote. [Govt. of India Act, 1858, s. 21.]

(2) The Secretary of State in Council may appoint any member of the Council to be Vice-President thereof, and the Secretary of State may at any time remove any person so appointed.

(3) At every meeting of the Council, the Secretary of State, or, in his absence, the Vice-President, if present, or, in the absence of both of them, one of the members of the Council, chosen by the members present at the meeting, shall preside. [Govt. of India Act, 1858, s. 22.]

Meetings of  
Council.

8. Meetings of the Council of India shall be convened and held as and when the Secretary of State directs, but one such meeting at least shall be held in every week. [Govt. of India Act, 1858, s. 22.]

Procedure at  
meetings.

9. (1) At any meeting of the Council of India at which the Secretary of State is present, if there is a difference of opinion on any question, except a question with respect to [Govt. of India Act, 1858, s. 23.]

which a majority of votes at a meeting is by this Act declared to be necessary, the determination of the Secretary of State shall be final.

(2) In case of an equality of votes at any meeting of the Council, the person presiding at the meeting shall have a second or casting vote.

(3) All acts done at a meeting of the Council in the absence of the Secretary of State shall require the approval in writing of the Secretary of State.

(4) In case of difference of opinion on any question decided at a meeting of the Council, the Secretary of State may require that his opinion and the reasons for it be entered in the minutes of the proceedings, and any member of the Council, who has been present at the meeting, may require that his opinion, and any reasons for it that he has stated at the meeting, be also entered in like manner.

As to the words "*except a question with respect to which a majority of votes at a meeting is by this Act declared to be necessary*," in sub-section (1), see sections 21, 28 (1), 29 (1), 30 (1), 85 (2) <sup>1(a)</sup>, 94, 95 (1), 99 (2), 100 (2), *post*, which require a majority of votes.

As to recording reasons when the Secretary of State overrides the majority, see s. 11 (3), *post*.

[Govt. of  
India Act,  
1858, s. 20.]

10. The Secretary of State may constitute Committees of the Council of India for the more convenient transaction of business, and direct what departments of business are to be under those committees respectively, and generally direct the manner in which all business of the Council or Committees thereof is to be transacted. Committees of Council.

The existing Committees are Finance, Political and Secret, Military, Revenue and Statistics, Public Works, Stores and Judicial and Public—see note to s. 11, *Ilbert's Digest*.

### *Orders and Communications.*

[Govt. of  
India Act,  
1858, s. 24.]

11. (1) Subject to the provisions of this Act, every order or communication proposed to be sent to India, and every order proposed to be made in the United Kingdom by the Secretary of State under this Act, shall, unless it has been submitted to a meeting of the Council of India, be deposited in the Council room for the perusal of all members of the Council during seven days before the sending or making thereof. Submission of proposed orders and communications to Council.

(2) Any member of the Council may record, in a minute-book kept for that purpose, his opinion with respect to any such order or communication, and a copy of every opinion so recorded shall be sent forthwith to the Secretary of State.

[Govt. of  
India Act,  
1858, s. 25.]

(3) If a majority of the Council so record their opinions against any act proposed to be done, the Secretary of State

shall, unless he defers to the opinion of the majority, record his reasons for acting in opposition thereto.

As to exceptions to the provisions of this section, *see* ss. 12, 13, *post*.

As to the cases in which a majority of votes of the Council are required, *see* notes to s. 9, *ante*.

Exception as to cases of urgency.

12. (1) Where it appears to the Secretary of State that the despatch of any communication or the making of any order, not being an order for which a majority of votes at a meeting of the Council of India is by this Act declared to be necessary, is urgently required, the communication may be sent or order made, although it has not been submitted to a meeting of the Council or deposited for the perusal of the members of the Council. [Govt. of India Act, 1858, s. 26.]

(2) In any such case, the Secretary of State shall, except as by this Act provided, record the urgent reasons for sending the communication or making the order, and give notice thereof to every member of the Council.

As regards the words "*a majority of votes.....is by this Act declared to be necessary*", *see* note to s. 9, *ante*.

The exception referred to in *sub-section* (2) is under s. 13(1), *post*.

Exception as to secret orders and despatches.

13. (1) [Where an order or communication concerns the levying of war or the making of peace, or the public safety, or the defence of the realm, or the treating or negotiating with any Prince or State, or the policy to be observed with respect to any Prince or State, and a majority of votes therefor at a meeting of the Council of India is not required by this Act, the Secretary of State may send the order or communication to the Governor General in Council or to any Governor in Council or officer or servant in India without submitting it to a meeting of the Council or depositing it for the perusal of the members of the Council, or sending or giving notice of the reasons for making it, if he considers that it is of a nature to require secrecy.] [East India Company Act, 1793, s. 19; Govt. of India Act, 1833, s. 36; Govt. of India Act, 1858, s. 27; Govt. of India Act, 1912, s. 1(1).]

(2) Where any despatch to the Secretary of State from the Governor General in Council or a Governor in Council concerns the government of India or of any part thereof, [or any of the matters aforesaid] and is, in the opinion of the authority sending it, of a nature to require secrecy, it may be marked "Secret" by that authority; and a despatch so marked shall not be communicated to the members of the Council of India unless the Secretary of State so directs. [East India Company Act, 1793, s. 22; Govt. of India Act, 1858, s. 28.]

*See* notes to ss. 9, 11 and 12, *ante*.

For a short history of these provisions regarding 'Secret' orders and despatches, *see* note (b) to section 14, *Ilbert's Digest*.

*Sub-section* (1) was substituted for the original *sub-section* (1) by the Government of India (Amendment) Act, 1916, Schedule I, *post*.

The words "*or any of the matters aforesaid*" were substituted in *sub-section (2)* by *ibid.*

This section and the next recognise the right of Governors in Council to communicate direct with the Secretary of State.

For definitions of "Governor General in Council" and "Governor in Council," *see* s. 134, *post.*

[Govt. of India Act, 1858, s. 19, Govt. of India Act, 1912, s. 1(1)]

14. Every despatch to the United Kingdom from the Governor General in Council or a Governor in Council shall be addressed to the Secretary of State. Address of despatches from India.

*See Ilbert*, note (b) to s. 15, *Digest*.

This does not prohibit the substitution for despatches of letters to the Under Secretary of State on matters of a formal nature—Legislative Department unofficial No. 342 of 1899. *See also* rule 34 of the *Secretariat Instructions*, *post.*

Under s. 71 (3), *post.*, a despatch forwarding authentic copy of a Regulation would have to be addressed to the "Secretary of State in Council."

For definitions of "Governor General in Council" and "Governor in Council," *see* s. 134, *post.*

[Govt. of India Act, 1858, s. 54.]

15. When any order is sent to India directing the actual commencement of hostilities by His Majesty's forces in India, the fact of the order having been sent shall, unless the order has in the meantime been revoked or suspended, be communicated to both Houses of Parliament within three months after the sending of the order, or if Parliament is not sitting at the expiration of those three months, then within one month after the next meeting of Parliament. Communication to Parliament as to orders for commencing hostilities.

In this connection, *see* section 22, *post.*

As to powers of Governor General in Council and Local Governments to make war or treaty, *see* ss. 44, 45 (2), *post.*

[East India Company Act, 1773, s. 9, last para.]

16. It is the duty of the Governor General in Council to transmit to the Secretary of State constantly and diligently an exact particular of all advices or intelligence, and of all transactions and matters, coming to the knowledge of the Governor General in Council and relating to the government, commerce, revenues or affairs of India. Correspondence by Governor General with Secretary of State.

*See Ilbert*, note to section 17, *Digest*.

This section supplements s. 33, *post.*

For definition of "Governor General in Council" *see* s. 134, *post.*

### *Establishment of Secretary of State.*

[Govt. of India Act, 1858, s. 15.]

17. (1) No addition may be made to the establishment of the Secretary of State in Council, nor to the salaries of the persons on that establishment, except by an Order of His Majesty in Council, to be laid before both Houses of Parliament within fourteen days after the making thereof, or, if Parliament is not then sitting, then within fourteen days after the next meeting of Parliament. Establishment of Secretary of State.

(2) The rules made by His Majesty for examinations, certificates, probation or other tests of fitness, in relation to appointments to junior situations in the civil service, shall apply to such appointments on the said establishment. [Govt. of India Act, 1858, s. 16.]

(5) The Secretary of State in Council may, subject to the foregoing provisions of this section, make all appointments to, and promotions in, the said establishment, and may remove any officer or servant belonging to the establishment.

For saving of existing Orders in Council, see section 130, *post*.

Pensions and gratuities

18. His Majesty may, by Warrant under the Royal Sign Manual, countersigned by the Chancellor of the Exchequer, grant to any secretary, officer or servant appointed on the establishment of the Secretary of State in Council, such compensation, superannuation or retiring allowance, or to his legal personal representative such gratuity, as may respectively be granted to persons on the establishment of a Secretary of State, or to the personal representatives of such persons, under the laws for the time being in force concerning superannuations and other allowances to persons having held civil offices in the public service, or to personal representatives of such persons. [Govt. of India Act, 1858, s. 18.]

See *Ilbert*, note to s. 19, *Digest*.

For saving of existing Warrants, see s. 130, *post*.

### *Indian Appointments.*

Indian appointments.

19. Except as otherwise provided by this Act, all powers of making rules in relation to appointments and admissions to service and other matters connected therewith, and of altering or revoking such rules, which, if the Government of India Act, 1858, had not been passed, might have been exercised by the Court of Directors of the East India Company or the Commissioners for the Affairs of India, may be exercised by the Secretary of State in Council : [Govt. of India Act, 1858, s. 37.]

Provided that, in the appointment of officers to His Majesty's army, the same provision as heretofore, or equal provision, shall be made for the appointment of sons of persons who have served in India in the military or civil service of the Crown or of the East India Company. [Govt. of India Act, 1858, s. 35; European Forces (India) Act, 1860, s. 1.]

See *Ilbert*, note to s. 20, *Digest*.

This section which is supplemented by s. 95, *post*, takes the place of sections 33 to 37 of the Government of India Act, 1858 (21 & 22 Vict., c. 106) and the European Forces (India) Act, 1860 (23 & 24 Vict., c. 100). Section 33 had ceased to be observed in practice. The direct appointment of cadets to His Majesty's Indian military forces ceased under 23 & 24 Vict., c. 100, the appointment of officers for service with the Indian Army being made under rules framed under section 35 and under s. 1 of 23 & 24

Vict., c. 100; these provided that not less than one-tenth of the cadets appointed to the British Army with a view to service with the Indian Army shall be persons of the classes referred to in s. 35. There are now no naval cadetships for India; the naval force of the East India Company having come to an end in 1863, see *Libert*, p. 98.

It would seem that s. 33 was intended to apply only to naval and military services. As to other appointments, if the section applied to them, it appears to have been made nugatory by s. 37 under which rules were made by the Secretary of State in Council, authorising the appointment of various classes of officers without submitting their names to His Majesty. Sections 34 and 36 ceased to be operative on the passing of 23 & 24 Vict., c. 100, all appointments of cadets for service with the Indian Army being made under the rules referred to above.

## PART II.

### THE REVENUES OF INDIA.

[Govt. of  
India Act,  
1858, s. 2.]

20. (1) The revenues of India shall be received for Application and in the name of His Majesty, and shall, subject to the of revenues, provisions of this Act, be applied for the purposes of the government of India alone.

[Govt. of  
India Act,  
1858, s. 42.]

(2) There shall be charged on the revenues of India alone—

- (a) all the debts of the East India Company; and
- (b) all sums of money, costs, charges and expenses which, if the Government of India Act, 1858, had not been passed, would have been payable by the East India Company out of the revenues of India in respect of any treaties, covenants, contracts, grants or liabilities existing at the commencement of that Act; and
- (c) all expenses, debts and liabilities lawfully contracted and incurred on account of the government of India; and
- (d) all payments under this Act.

[Govt. of  
India Act,  
1858, s. 2.]

(3) The expression “the revenues of India” in this Act shall include all the territorial and other revenues of or arising in British India, and, in particular,—

- (i) all tributes and other payments in respect of any territories which would have been receivable by or in the name of the East India Company if the Government of India Act, 1858, had not been passed; and

[Govt. of  
India Act,  
1858, s. 27.]

- (ii) all fines and penalties incurred by the sentence or order of any Court of justice in British India, and all forfeitures for crimes of any moveable or immoveable property in British India; and

- (iii) all moveable or immoveable property in British India escheating or lapsing for want of an heir or successor, and all property in British India devolving as *bona vacantia* for want of a rightful owner.

(4) All property vested in, or arising or accruing from property or rights vested in, His Majesty under the Government of India Act, 1858, or this Act, or to be received or disposed of by the Secretary of State in Council under this Act, shall be applied in aid of the revenues of India. [Govt. of India Act, 1858, ss. 39, 42.]

See notes to s. 1, *ante*. See also *Ilbert*, notes to s. 22, *Digest*.

The traditional phrase "revenues of India" is used, but it necessarily refers to revenues of British India.

It has been held that ss. 2 and 41 of the Government of India Act 1858, contain the only legal restrictions on the application of the revenues of India—see Leg. Dep. u. o. No. 1705, July and August, 1878; No. 2684, July, 1880. This statement of the case seems to require qualification. There are various statutory prohibitions and limitations, and the Indian legislature has powers of appropriation; subject to these the Governor General in Council, with the control of the Secretary of State, can make out what appropriations he pleases, provided that they are for the purposes of the government of India: *Mr. Stokes and Fitzgerald*, Leg. Dep. u. o. Nos. 15-16 of 1878; 195 of 1886. Taxation on behalf of a foreign Government is not permissible: Leg. Dep. u. o. No. 782 of 1897.

With reference to the words "*Subject to the provisions of this Act*" in sub-section (1), see ss. 22 and 31, *post*.

As to the liability of the Secretary of State for torts committed by Government servants and the construction of the words "*liabilities lawfully incurred*" in sub-section (2) (c), see (opinion of *Advocate-General*) Leg. Dep. u. o. Nos. 708 of 1911 and 459 of 1912 (B. Proceedings September 1913, Nos. 57—60). See also *Ross v. Secretary of State*, 1. L. R., 87 Mad., 55 (1913).

It has been held by the Legislative Department to be doubtful whether, without the previous sanction of the Secretary of State in Council, the Government of India could direct a fine to be applied in compensation for damage—see Legislative Department A. Proceedings, January, 1870, Nos. 5 to 9. The expenditure of the proceeds of fines and penalties are subject to the control of the Secretary of State in Council: Leg. Dep. u. o. No. 36 of 1893. The Government of India cannot without legislative sanction give grants out of the revenue: *Miller*, *Minutes*, No. 110 (1894). For special provisions to dispose of *escheats*, see s. 31, *post*.

Control of  
Secretary of  
State over  
expenditure  
of revenues.

21. The expenditure of the revenues of India, both in British India and elsewhere, shall be subject to the control of the Secretary of State in Council; and no grant or appropriation of any part of those revenues, or of any other property coming into the possession of the Secretary of State in Council by virtue of the Government of India Act, 1858, or this Act, shall be made without the concurrence of a majority of votes at a meeting of the Council of India: [Govt. of India Act, 1858, s. 41.]

[Provided that a grant or appropriation made in accordance with provisions or restrictions prescribed by the

Secretary of State in Council, with the concurrence of a majority of votes at a meeting of the Council, shall be deemed to be made with the concurrence of a majority of such votes.]

See *Ilbert*, notes to s. 23, *Digest*, where he observes:—"This section has given rise to questions as to the relations (a) between the Secretary of State and his Council, and (b) between the former and the Government of India."

As to (a) see *Ilbert's* notes and Parliamentary debates there quoted. As to (b), the difficulties centre round the "power of the Indian legislature to appropriate revenue to specific object. *Ilbert* observes that "a strict view of the enactment would be inconsistent with the general course of Indian legislation, and would give rise to inconveniences in practice." For discussions, see Legislative Department A. Proceedings, December, 1883, Nos. 16 to 104; *Scoble*: Minutes No. 108 (1889) Leg. Dep. u. o. No. 263 of 1913 (Appendix V).

*The Secretary of State* has finally ruled with regard to this section in his Despatch No. 172-Revenue, dated the 4th December 1914, that "the construction hitherto placed on its provisions is that the Secretary of State in Council may exercise the powers thereby vested in him not only by specific prohibitions or sanctions in individual cases, but generally and antecedently through regulations authorising Indian Governments to incur expenditure, appropriate revenue, and make grants of other property." As examples of this procedure, he cites Legislative Despatch No. 21, dated the 9th July, 1862, the Statutory Rules of 1894, and the Audit Resolution, Finance Department No. 368, dated the 15th March, 1913.

See also notes on ss. 2, 20, *ante*.

The *proviso* was inserted by the Government of India (Amendment) Act, 1916, Sch. 1.

[Govt. of  
India Act,  
1858, s. 55.]

22. Except for preventing or repelling actual invasion of His Majesty's Indian possessions, or under other sudden and urgent necessity, the revenues of India shall not, without the consent of both Houses of Parliament, be applicable to defraying the expenses of any military operations carried on beyond the external frontiers of those possessions by His Majesty's forces charged upon those revenues.

Application of revenues to military operations beyond the frontier.

See *Ilbert*, notes to s. 24, *Digest* and the debates in Parliament cited therein. See also s. 15 *ante* and notes thereto.

For cases considered by the Government of India, see *Scoble*, Minutes No. 137; Leg. Dep. u. o. No. 274 of 1890; No. 93 of 1900 (Lumsden's Horse). See also note of *Mr. Harvey James* on clause 24 of the Consolidation Bill, 1896.

[Govt. of  
India Act,  
1858, s. 43.]

23. (1) Such parts of the revenues of India as are remitted to the United Kingdom, and all money arising or accruing in the United Kingdom from any property or rights vested in His Majesty for the purposes of the government of India, or from the sale or disposal thereof, shall be paid to the Secretary of State in Council, to be applied for the purposes of this Act.

Accounts of Secretary of State with Bank.

(2) All such revenues and money shall, except as by this section is provided, be paid into the Bank of England to the credit of an account entitled "The Account of the Secretary of State in Council of India."



(3) The money placed to the credit of that account shall be paid out on drafts or orders, either signed by two members of the Council of India and countersigned by the Secretary of State, or one of his Under Secretaries or his Assistant Under Secretary, or signed by the Accountant-General on the establishment of the Secretary of State in Council, or by one of the two senior clerks in the department of that Accountant General and countersigned in such manner as the Secretary of State in Council directs; and any draft or order so signed and countersigned shall effectually discharge the Bank of England for all money paid thereon.

[Govt. of India Act, 1858, s. 43; Govt. of India Act, 1859, s. 3.]

(4) The Secretary of State in Council may, for the payment of current demands, keep at the Bank of England such accounts as he deems expedient; and every such account shall be kept in such name and be drawn upon by such person, and in such manner, as the Secretary of State in Council directs.

[Govt. of India Act, 1858, s. 43, proviso; East India Stock Act, 1860, s. 7.]

(5) There shall be raised in the books of the Bank of England such accounts as may be necessary in respect of stock vested in the Secretary of State in Council; and every such account shall be entitled "The Stock Account of the Secretary of State in Council of India."

[Govt. of India Act, 1858, s. 45.]

(6) Every account referred to in this section shall be a public account.

This section re-enacts the provisions of the Government of India Act, 1858, ss. 43, 45, the Government of India Act, 1859 (22 & 23 Vict., c. 41), s. 3, and the East India Stock Act, 1860 (23 & 24 Vict., c. 102), s. 7; Sub-section (3) incorporates the general modification made by s. 16 of the India Stock Certificate Act, 1863 (26 & 27 Vict., c. 73), which is still in force.

See in this connection s. 6 of the East India Stock Act, 1860 (23 & 24 Vict., c. 102), which is not repealed or re-enacted by this Act.

Powers of attorney for sale or purchase of stock and receipt of dividends.

24. The Secretary of State in Council, by power of attorney executed by two members of the Council of India and countersigned by the Secretary of State or one of his Under Secretaries or his Assistant Under Secretary, may authorise all or any of the cashiers of the Bank of England—

[Govt. of India Act, 1858, s. 47.]

- (a) to sell and transfer all or any part of any stock standing in the books of the Bank to the account of the Secretary of State in Council; and
- (b) to purchase and accept stock for any such account; and
- (c) to receive dividends on any stock standing to any such account;

and, by any writing signed by two members of the Council of India and countersigned as aforesaid, may direct the application of the money to be received in respect of any such sale or dividend:

Provided that stock shall not be purchased or sold and transferred under the authority of any such general power of attorney, except on an order in writing directed to the Chief Cashier and Chief Accountant of the Bank of England, and signed and countersigned as aforesaid.

The general modification made by the India Stock Certificate Act, 1863, s. 16, has been incorporated in this section. See note to s. 23 *ante*.

[Govt. of  
India Act,  
1858, s. 48.]

25. All securities held by or lodged with the Bank of England in trust for or on account or on behalf of the Secretary of State in Council may be disposed of, and the proceeds thereof may be applied, as may be authorised by order in writing signed by two members of the Council of India and countersigned by the Secretary of State or one of his Under Secretaries or his Assistant Under Secretary, and directed to the Chief Cashier and Chief Accountant of the Bank of England.

Provision as  
to securities.

The general modification made by the India Stock Certificate Act, 1863, s. 16, has been incorporated in this section. See note to s. 23 *ante*.

[Govt. of  
India Act,  
1858, s. 53:  
East India  
Loan Act,  
1874, s. 15.]

26. (1) The Secretary of State in Council shall, within the first [twenty-eight days] during which Parliament is sitting next after the first day of May in every year, lay before both Houses of Parliament—

Accounts to  
be annually  
laid before  
Parliament.

- (a) an account, for the financial year preceding that last completed, of the annual produce of the revenues of India, distinguishing the same under the respective heads thereof, in each of the several provinces; and of all the annual receipts and disbursements at home and abroad for the purposes of the government of India, distinguishing the same under the respective heads thereof;
- (b) the latest estimate of the same for the financial year last completed;
- (c) accounts of all stocks, loans, debts and liabilities chargeable on the revenues of India, at home and abroad, at the commencement and close of the financial year preceding that last completed, the loans, debts and liabilities raised or incurred within that year, the amounts paid off or discharged during that year, the rates of interest borne by those loans, debts and liabilities respectively, and the annual amount of that interest; and

\* \* \* \* \*

- (e) a list of the establishment of the Secretary of State in Council, and the salaries and allowances payable in respect thereof.

(2) If any new or increased salary or pension of fifty pounds a year or upwards has been granted or created within any year in respect of the said establishment, the particulars thereof shall be specially stated and explained at the foot of the account for that year.

(3) The account shall be accompanied by a statement, prepared from detailed reports from each province, in such form as best exhibits the moral and material progress and condition of India.

See notes to *Ilbert's Digest*, s. 29, which corresponds to this section. The provisions of s. 15 of the East India Loan Act, 1874 (37 & 38 Vict., c. 3), are re-enacted in sub-section (1) (c) of this section.

The Indian Financial Statement is made in the Indian Legislative Council in March when it is discussed—see s. 67 (3), *post*, and *Rules for the discussion of the Annual Financial Statement, post*.

"Financial year" means the twelve months ending with March, see Interpretation Act, 1889, s. 22.

In sub-section (1) the words "twenty-eight days" were substituted for the words "fourteen days" and clause (d) was repealed by the Government of India (Amendment) Act, 1916, Schedule I, and Schedule II, respectively.

Audit of  
Indian  
accounts in  
United  
Kingdom.

27. (1) His Majesty may, by Warrant under His Royal Sign Manual, countersigned by the Chancellor of the Exchequer, appoint a fit person to be Auditor of the accounts of the Secretary of State in Council, and authorise that Auditor to appoint and remove such assistants as may be specified in the Warrant. [Govt. of India Act, 1858, s. 52.]

(2) The Auditor shall examine and audit the accounts of the receipt, expenditure and disposal in the United Kingdom of all money, stores and property applicable for the purposes of this Act.

(3) The Secretary of State in Council shall, by the officers and servants of his establishment, produce and lay before the Auditor all such accounts, accompanied by proper vouchers for their support, and submit to his inspection all books, papers and writings having relation thereto.

(4) The Auditor may examine all such officers and servants of that establishment, being in the United Kingdom, as he thinks fit, in relation to such accounts and the receipt, expenditure or disposal of such money, stores and property, and may for that purpose, by writing signed by him, summon before him any such officer or servant.

(5) The Auditor shall report to the Secretary of State in Council his approval or disapproval of the accounts aforesaid, with such remarks and observations in relation thereto, as he thinks fit, specially noting cases (if any) in which it appears to him that any money arising out of the revenues of India has been appropriated to purposes other than those to which they are applicable.

(6) The Auditor shall specify in detail in his reports all sums of money, stores and property which ought to be accounted for, and are not brought into account or have not been appropriated in conformity with the provisions of the law, or which have been expended or disposed of without due authority, and shall also specify any defects, inaccuracies or irregularities which may appear in the accounts, or in the authorities, vouchers or documents having relation thereto.

(7) The Auditor shall lay all his reports before both Houses of Parliament, with the accounts of the year to which the reports relate.

(8) The Auditor shall hold office during good behaviour.

(9) There shall be paid to the Auditor and his assistants, out of the revenues of India, such salaries as His Majesty by Warrant signed and countersigned as aforesaid, may direct.

[India Office  
Auditor Act,  
1881, s. 1.]

(10) The Auditor and his assistants (notwithstanding that some of them do not hold certificates from the Civil Service Commissioners) shall, for the purposes of superannuation [or retiring] allowance, [and their legal personal representatives shall, for the purposes of gratuity] be in the same position as if [the Auditor and his assistants] were on the establishment of the Secretary of State in Council.

See note to s. 30, *Ilbert's Digest*.

In *sub-section* (10) the words "or retiring" and the words "and their legal ..... gratuity" were inserted and the words "the Auditor and his assistants" were substituted for "they" by the Government of India (Amendment) Act, 1916, Schedule I. *Cf.* s. 18, *ante*.

### PART III.

#### PROPERTY, CONTRACTS AND LIABILITIES.

[Govt. of  
India Act,  
1858, s. 40.]

28. (1) The Secretary of State in Council may, with the concurrence of a majority of votes at a meeting of the Council of India, sell and dispose of any real or personal estate for the time being vested in His Majesty for the purposes of the government of India, and raise money on any such real [or personal] estate by way of mortgage [or otherwise], and make the proper assurances for any of those purposes, and purchase and acquire any property.

Power of  
Secretary of  
State to sell,  
mortgage and  
buy property.

(2) Any assurance relating to real estate, made by the authority of the Secretary of State in Council, may be made under the hands and seals of [two] members of the Council of India.

(3) All property acquired in pursuance of this section shall vest in His Majesty for the purposes of the government of India.

See in this connection s. 20 (4) *ante* and sections 30, 33 (4), *post*.

"*Real or personal estate*": cf. the corresponding terms "moveable property" and "immoveable property" which are defined in the General Clauses Act, 1897 (X of 1897), s. 3.

As to the words "*for the purposes of the Government of India*", in sub-sections (1) and (3), for discussion on doubtful cases, see Legislative Department B. Progs., March, 1882, Nos. 22 and 23; See also *Srinivash, Prasad Singh V. Kesho Prasad Singh* (1911), I. L. R. 38, Cal. 754.

The words "or personal" and "or, otherwise" were inserted and the word "two" was substituted for "three" by the Government of India (Amendment) Act, 1916, Schedule I.

The term "*assurance*" would seem to cover any conveyance of lands or tenements.

The Legislative Department has advised that *sanads* issued under Bombay Act IV of 1868, being merely evidence of title, do not fall under this section; Leg. Dep. u. o. No. 1039 of 1877.

Contracts of  
Secretary  
of State.

29. (1) The Secretary of State in Council may, with the concurrence of a majority of votes at a meeting of the Council of India, make any contract for the purposes of this Act.

[Govt. of  
India Act,  
1853, s. 40;  
Govt. of  
India Act,  
1859, s. 5;  
Contracts  
(India Office  
Act), 1903,  
ss. 2, 3.]

(2) Any contract so made may be expressed to be made by the Secretary of State in Council.

(3) Any contract so made, which if it were made between private persons, would be by law required to be under seal, may be made, varied or discharged under the hands and seals of two members of the Council of India.

(4) Any contract so made which, if it were made between private persons, would be by law required to be signed by the party to be charged therewith, may be made, varied or discharged under the hands of two members of the Council of India.

(5) Provided that any contract for or relating to the manufacture, sale, purchase or supply of goods, or for or relating to affreightment or the carriage of goods, or to insurance, may, subject to such rules and restrictions as the Secretary of State in Council prescribes, be made and signed on behalf of the Secretary of State in Council by any person upon the permanent establishment of the Secretary of State in Council who is duly empowered by the Secretary of State in Council in this behalf. Contracts so made and signed shall be as valid and effectual as if made as prescribed by the foregoing provisions of this section. Particulars of all contracts so made and signed shall be laid before the Secretary of State in Council in such manner and form and within such times as the Secretary of State in Council prescribes.

(6) The benefit and liability of every contract made in pursuance of this section shall pass to the Secretary of State in Council for the time being.

As to the words "for the purposes of this Act" at the end of subsection (1), *see* notes to section 28, *ante*.

[Govt. of India Act, 1859, ss. 1, 2; East India Contracts Act, 1870, s. 2.]

30. (1) The Governor General in Council and any Local Government may, on behalf and in the name of the Secretary of State in Council, and subject to such provisions or restrictions as the Secretary of State in Council, with the concurrence of a majority of votes at a meeting of the Council of India, prescribes, sell and dispose of any real or personal estate whatsoever in British India, within the limits of their respective governments, for the time being vested in His Majesty for the purposes of the government of India, or raise money on any such real [or personal] estate by way of mortgage [or otherwise] and make proper assurances for any of those purposes, and purchase or acquire any property in British India within the said respective limits, and make any contract for the purposes of this Act.

Power to execute assurances, etc., in India.

(2) Every assurance and contract made for the purposes of this section shall be executed by such person and in such manner as the Governor General in Council by resolution directs or authorises, and if so executed may be enforced by or against the Secretary of State in Council for the time being.

(3) All property acquired in pursuance of this section shall vest in His Majesty for the purposes of the government of India.

For definitions of "Governor General in Council" and "Local Government," *see* section 134, *post*.

The words "or personal" and "or otherwise" were inserted in subsection (1) by the Government of India (Amendment) Act, 1916, Schedule I.

As to the circumstances which led to the passing of the enactments re-enacted in this section, *see* Legislative Department C Proceedings March, 1873, Nos. 5 to 11; also note (c) to section 33 *Ilbert's Digest*. *See also* Leg. Dep. u. o. Nos. 116 of 1873, 309 of 1874.

"*Sell and dispose of*": these words give power to make a grant without consideration: *Secretary of State's* Revenue Despatch No. 172, dated 4th December, 1914. The position in respect of free grants had previously been regarded as doubtful: Leg. Dep. u. o. No. 263 of 1912.

"*Real or personal estate*": *cf.* the corresponding terms "moveable property" and "immoveable property" which are defined in the General Clauses Act, 1897 (X of 1897), s. 3.

The term "*assurance*" would seem to cover any conveyance of lands or tenements.

The power of alienating State land was intended to vest in the Executive Government, not in the legislature; *Chalmers' Minutes* No. 33 (Leg. Dep. u. o. No. 223 of 1897). Rules made under this section would not apply to grants, etc., made under special legislative sanction: see Leg. Dep. u. o. No. 263 of 1908.

Section 1 of the Government of India Act, 1859, read with the Government of India Act, 1858, s. 65, and Act I of 1876, s. 4 (see now Act XIII of 1885), was held to authorize the issue of licenses by the Governor General in Council for establishing or maintaining telephone exchanges—see Legislative Department B. Proceedings, March, 1882, Nos. 22 and 23.

Section 2 of the Government of India Act, 1859, read with section 2 of the East India Contracts Act, 1870, gave power to designate the officers by whom contracts may be executed; such contracts must be expressed in the name of the Secretary of State (opinion of *Law Officers of the Crown*): Leg. Dep. u. o. No. 448 of 1907. See also note (d) to s. 33, *Ilbert's Digest*.

*Sanads* issued under Bombay Act IV of 1868, s. 10, are not "deeds" within the meaning of s. 2 of the Government of India Act, 1859; Leg. Dep. u. o. No. 1170 of 1877.

Power to  
dispose of  
escheated  
property,  
etc.

31. The Governor General in Council, and any other person authorised by any Act passed in that behalf by the Governor General in Legislative Council, may make any grant or disposition of any property in British India accruing to His Majesty by forfeiture, escheat or lapse, or by devotion as *bona vacantia*, to or in favour of any relative or connection of the person from whom the property has accrued, or to or in favour of any other person. [Govt. of India Act, 1853, s. 27 proviso.]

For definition of "Governor General in Council", see section 134, *post*.

See section 20 (1) (3), *ante* and note thereunder *re* grants out of revenue; also note under section 1, *ante*.

*Escheats*.—The Madras Government were informed that final orders as to the disposal of escheats should be reserved to the Government of India—see *Ilbert, Minutes*, No. 28 (Leg. Dep. u. o. No. 342 of 1884). These provisions do not repeal the Madras Escheats Regulation (VII of 1817): *Richards, Minutes* No. 123 (Leg. Dep. u. o. Nos. 104 and 274 of 1908). They contemplate legislation in the Council of the Governor General: Leg. Dep. u. o. No. 322 of 1910.

As to right of Government to dispose of escheated property which belonged to a Muhammedan, see Legislative Department B Proceedings, September, 1831, No. 8.

It has been held that s. 27 of the Government of India Act, 1853 (16 & 17 Vict., C. 95), overrides the Mitakshara rule prohibiting escheats of a Brahman's property: *Collector of Masulipatam v. Cavalry V. Narainappa* (1881), 8 Moore L. A. 500; see also *Ranee Sonet Kowar v. Mirza Himmud Bahadur* (1876), W. R. 3, I. A. 92.

As to taking possession of escheated property—see Leg. Dep. u. o. No. 437 of 1889.

[Govt. of India Act, 1858, ss. 65, 63; Govt. of India Act, 1859, ss. 2, 6.]

32. (1) The Secretary of State in Council may sue and be sued by the name of the Secretary of State in Council as a body corporate.

Rights and liabilities of Secretary of State in Council.

(2) Every person shall have the same remedies against the Secretary of State in Council as he might have had against the East India Company if the Government of India Act, 1858, and this Act had not been passed.

(3) The property for the time being vested in His Majesty for the purposes of the government of India shall be liable to the same judgments and executions as it would have been liable to in respect of liabilities lawfully incurred by the East India Company if the Government of India Act, 1858, and this Act had not been passed.

(4) Neither the Secretary of State nor any member of the Council of India shall be personally liable in respect of any assurance or contract made by or on behalf of the Secretary of State in Council, or any other liability incurred by the Secretary of State or the Secretary of State in Council in his or their official capacity, nor in respect of any contract, covenant or engagement of the East India Company; nor shall any person executing any assurance or contract on behalf of the Secretary of State in Council be personally liable in respect thereof; but all such liabilities, and all costs and damages in respect thereof, shall be borne by the revenues of India.

Various points arising on this section are discussed in the note on section 35 of *Ilbert's Digest* :—(a) as to the position of the Secretary of State in Council as a quasi-corporate body, (b) as to the substitution of the procedure here prescribed for procedure by Petition of Right, (c) as to the defence, “act of State,” (d) as to the saving of the prerogative, (e) as to the legal liability of Colonial Governors generally.

See *P. and O. S. N. Co. v. Secretary of State for India* (1861), Bourke's Reports, Part VII, 166. See also *Frith v. The Queen* (1872) L. R. 7 Exch. 365; *Kinloch v. Secretary of State for India*, L. R. 15 Ch. D. 1 and 7 App. Cas., 919; and *Brown v. Kedgree* (1862-3), 1 Hyde's Rep. 253; *Nobin Chandra Dey v. Secretary of State for India* (1875), L. R. Cal. 11; *Ross v. Secretary of State for India* (1913), L. R. 37 Mad. 55; *Moment v. Secretary of State for India* (1912), L. R. 40 I. A. 43.

*Sub-section (2)* debars any Indian Legislature from passing any Act which would prevent a subject from suing the Secretary of State in Council in a Civil Court in any case in which he could have similarly sued the East India Company—see *Moment's* case referred to above, regarding s. 41 (b) of Burma Act IV of 1898. For discussion on the *Moment* case, see Leg. Dep. u. o. No. 129 of 1913, and No. 252 of 1914.

The term “assurance” would seem to cover any conveyance of lands or tenements.

As to the liability of the Secretary of State for torts committed by Government servants, see note to section 20, *ante*.



## PART IV.

## THE GOVERNOR GENERAL IN COUNCIL.

*General powers and duties of Governor General in Council.*

General powers and duties of Governor General in Council.

33. The superintendence, direction and control of the civil and military government of India is vested in the Governor General in Council, who is required to pay due obedience to all such orders as he may receive from the Secretary of State.

[East India Company Act, 1772, s. 9; East India Company Act, 1793, s. 40; Govt. of India Act, 1833, s. 39.]

*See notes to s. 36 in Ilbert's Digest.*

For definition of "Governor General in Council" see section 134, *post*, also s. 3 (22) of the General Clauses Act, 1897 (X of 1897). The "Governor General in Council" constitutes the "Government of India" — see note to r. 12 of the *Rules of Business, post*.

As to relation of Local Governments to the Governor General in Council, see section 45, *post*.

As to the control of the Home authorities over the Government of India, see sections 2, 16, 21, 124 (2), 131 (2) and notes thereto. See also Leg. Dep. u. n. Nos. 24 of 1912, and 362 of 1914.

*The Governor General.*

The Governor General.

34. The Governor-General of India is appointed by His Majesty by Warrant under the Royal Sign Manual.

[Govt. of India Act, 1858, s. 29.]

"The title 'Viceroy,' although it is most frequently used in ordinary parlance, has no statutory authority, and has never been employed by the legislature, either in England or in India. It originated in the late Queen's well known Proclamation of 1858, which announced the assumption of the Government of India by the Crown, and in doing so referred to Lord Canning, already appointed Governor General by the old Board of Directors, as 'our first Viceroy and Governor General.' The title seems to have been introduced on this special occasion with the object of accentuating the fact that India had been brought under the direct government of the Crown, and that the Governor General was to be, not only the head of the administration in this country, but also the personal representative of the Sovereign; for it appears to be the case that the Warrants of all Lord Canning's successors refer to them as Governors General only, and not as 'Viceroys.' The latter is, therefore, a title of courtesy which may most appropriately be used in connection with the State and social functions of the Governor General." *Carnduff's Military and Cantonment Law.*

*See also Appendix V, post, and note to s. 37, Ilbert's Digest.*

Section 10 of the East India Company Act, 1772 (13 Geo. 3, C. 63), which was probably spent and is repealed by this Act, was probably the origin of the five years to which the Governor General's term of office and that of a Member of his Executive Council is limited in practice. There is no statutory limit to the term of office of Governor General, and both Lord Curzon's and Lord Hardinge's terms were extended—see also note to section 36, *post*.

For the most part the Governor General exercises his functions *in Council*, but in certain cases he acts independently of his Council, *e.g.*, ss. 38, 41 (2), 43, 54 (1), 72, etc.

The expression "Governor" as used in Acts of Parliament generally, from 1889, in relation to India, means, unless the contrary intention appears, the Governor General of India and includes any person who for the time being has his powers—see the Interpretation Act, 1889 (52 & 53 Vict., c. 63), s. 18 (6).

*The Governor General's Executive Council.*

**35.** The Governor General's Executive Council consists of the Ordinary Members and the Extraordinary Members (if any) thereof.

The expression "Executive Council" is new, and distinguishes the Executive from the Legislative Council.

Constitution of Governor General's Executive Council.

This section does not re-enact any specific enactment, but represents the existing law—see the next two sections.

[Govt. of India Act, 1858, s. 7; Indian Councils Act, 1861, s. 3; Govt. of India Act, 1869, s. 8; Indian Councils Act, 1874, s. 1.]

**36.** (1) The Ordinary Members of the Governor General's Executive Council shall be appointed by His Majesty by Warrant under the Royal Sign Manual.

Ordinary Members of Council.

(2) The number of the Ordinary Members of the Council shall be five, or, if His Majesty thinks fit to appoint a sixth member, six.

(3) Three at least of them must be persons who, at the time of their appointment, have been for at least ten years in the service of the Crown in India, and one must be a barrister of England or Ireland, or a member of the Faculty of Advocates of Scotland, of not less than five years' standing.

(4) If any person appointed an Ordinary Member of the Council is at the time of his appointment in the military service of the Crown, he shall not, during his continuance in office as such member, hold any military command or be employed in actual military duties.

The number of Ordinary Members was increased to six under s. 1 of the Indian Councils Act, 1874 (37 & 38 Vict., c. 91) *post*. The six Members are, under existing arrangements, in charge, respectively, of (1) the Home Department, (2) the Finance Department, (3) the Department of Revenue and Agriculture and Public Works Department, (4) the Department of Commerce and Industry and the Railway Department, (5) the Department of Education, and (6) the Legislative Department. The Governor General himself takes the portfolio in the Foreign and Political Department, and the Commander-in-Chief, in the capacity of Extraordinary Member, is at the head of the Army Department. See rr. 1 and 2 of the *Rules of Business*, *post*.

In practice the tenure of office of an Ordinary Member of Council (whether of the Governor General's Council or of that of the Governor of Madras, Bombay or Bengal) is limited to five years. This arose no doubt, from the circumstance that Hastings and his Councillors were, by s. 10 of the East India Company Act, 1772 (13 Geo. 3, c. 63), otherwise known as "the Regulating Act," appointed by name for that

period. But as regards their successors no such limit is fixed either by Statute or by the Warrants of appointment issued to them, and Sir H. S. Maine's term as Law Member was in fact extended beyond the five years. Similarly, the term of office of Sir A. Arundel as Home Member was extended by about five months, and that of Sir Ali Imam as Law Member by about six months. The appointments of Governor General, Governors, Lieutenant-Governors and Commander-in-Chief are also similarly limited by custom—see note to section 34, *ante*.

In computing the quinquennial period, it has been laid down that any time during which a Member (not having himself been granted leave) draw less than the full pay of the appointment—a condition of things which can arise only in the case of a person appointed to officiate during the absence of a Member on leave—should be excluded. Otherwise the term should be reckoned from the date when the Member first entered upon his duties whether as a temporary Member appointed in India, or after the issue of His Majesty's Warrant of appointment. See despatch from the Secretary of State (Lord George Hamilton), No. 92 (Public), dated the 26th July, 1901. See also notes to s. 89, *Ilbert's Digest*.

As to salaries, leave of absence and filling of vacancy in the office of Ordinary Member, see Part VII, *post*. As to trading, see s. 124 (4).

For form of notification appointing an Ordinary Member of Council, see App. XII, No. 1, *post*.

Extraordi-  
nary  
Members of  
Council.

37. (1) The Secretary of State in Council may, if he thinks fit, appoint the Commander-in-Chief for the time being of His Majesty's forces in India to be an Extraordinary Member of the Governor General's Executive Council, and in that case the Commander-in-Chief shall, subject to the provisions of this Act, have rank and precedence in the Council next after the Governor General. [Indian Councils Act, 1861, s. 3, last para.]

(2) When and so long as the Council assembles in any province having a Governor, he shall be an Extraordinary Member of the Council. [Indian Councils Act, 1861, s. 9.]

The Commander-in-Chief has hitherto been appointed by the Secretary of State under s. 25 of the East India Company Act, 1793 (33 Geo. 3, c. 52), read with s. 3 of the Government of India Act, 1858 (21 & 22 Vict., c. 106), and provisional appointments to the office were made by the like authority under s. 27 of the former Statute, see now sections 2 (1), 47 (3), 87, 88 of the Government of India Act, 1915.

The Secretary of State (Lord George Hamilton) in his despatch No. 66 (Military), dated the 30th June, 1898, intimated that he did not propose in future to appoint an officer temporarily acting as Commander-in-Chief to be an Extraordinary Member of Council; but the arrangement under which the Army Department is now administered, was not then in view.

As to the words "*subject to the provisions of this Act*" and the relative rank and precedence of the Commander-in-Chief and the Vice-President of Council, see sections 38, 42, 61 (3), *post* and notes thereto.

The place here assigned to the Commander-in-Chief is with reference to the Executive Council only. An Extraordinary Member of the Executive Council is also a member of the Legislative Council—see section 63 (1), *post*. As to the position of the Commander-in-Chief with reference to the local Councils of Madras, Bombay and Bengal, see section 47 (6), *post*.

In practice the Commander-in-Chief is always appointed an Extraordinary Member of Council. See note to section 36 *ante* and also note to s. 40, *Ilbert's Digest*.

[Indian  
Councils Act,  
1909, s. 4.]

38. The Governor General shall appoint a member of his Executive Council to be Vice-President thereof.

Vice-President of Council.

The power of appointing a member to be Vice-President is vested in the Governor General personally.

The section only authorises the appointment of a particular named member; it does not permit of the appointment of the member in charge of a particular department *ex-officio* to be Vice-President.

As to the powers of the Vice-President (and, in his absence, of the Senior Ordinary Member present) during the absence of the Governor General, see sections 42, 64 (3), *post*.

As to the appointment of a Member of Council other than the Governor General or Vice-President to preside during discussion of the Financial Statement, etc., see s. 67 (3), *post*.

The Vice-President, it will be noted, is Vice-President of the Executive Council, and not of the Legislative Council only, see s. 63 (1), *post*. For form of notification appointing a Vice-President of the Governor General's Council, see Appendix XII, No. 4, *post*. The succession list of Vice-Presidents of the Governor General's Council is given below:—

The Hon'ble Sir Herbert H. Risley (Home Member).

" " " Harvey Adamson ( " " ).

" " " J. L. Jenkins ( " " ).

" " " Guy Fleetwood Wilson (Finance Member).

" " " Harcourt Butler (Education Member).

" " " William Clarke (Commerce and Industry Member).

" " " Ali Imam (Law Member).

" " " G. R. Lowndes (Law Member).

[Indian  
Councils Act,  
1861, s. 9.]

39. (1) The Governor General's Executive Council shall Meetings. assemble at such places in India as the Governor General in Council appoints.

(2) At any meeting of the Council, the Governor General or other person presiding and one Ordinary Member of the Council may exercise all the functions of the Governor General in Council.

[Govt. of  
India Act,  
1833, s. 48.]

The Governor General's Executive Council now assembles regularly at the headquarters of the Government of India which, until the recent transfer of the Capital to Delhi, were Calcutta and Simla. (See notes to s. 42, *Ilbert's Digest*). It appears to have been convened at Allahabad in April, 1871, and at Agra in November, 1873, and on each of these occasions, legislative meetings—as to which see section 64, *post*,—were held. It was—see Home Department's Notification No. 3571, dated the 4th November, 1905, in the *Gazette of India*, 1905, Pt. I, p. 813—directed to assemble at Bombay temporarily in order that Lord Minto might formally "take his seat in Council" immediately after the departure of Lord Curzon. For form of convening notification, see App. XII, No. 6, *post*.

It appears that the Executive Council has, on occasion, met outside British India and the present section may probably be regarded as authorising this—see *Serial No. 11* in Legislative Department A Progs., March, 1915, Nos 23-31.

An alternative procedure to sub-section (2) is provided by section 43, *post*.

Additional members are not entitled to be present at meetings of the Executive Council, see s. 63 (5), *post*.

Business of  
Governor  
General in  
Council.

40. (1) All orders and other proceedings of the Governor General in Council shall be expressed to be made by the Governor General in Council, and shall be signed by a Secretary to the Government of India, or otherwise, as the Governor General in Council may direct.

[East India Company Act, 1793, s. 39; East India Company Act, 1813, s. 79.]  
[Indian Councils Act, 1861, s. 8.]

(2) The Governor General may make rules and orders for the more convenient transaction of business in his Executive Council, and every order made, or act done, in accordance with such rules and orders, shall be treated as being the order or the act of the Governor General in Council.

*Sub-section (1)* follows the Secretaries to Government Act, 1834 (II of 1834). For definition of "Governor General in Council," see section 134, *post*. See also note to s. 33, *ante*.

Documents should not be signed by the Governor General personally: see Legislative Department B. Proceedings, October, 1874, No. 4; Unofficial No. 2713 of 1880. There is no distinction in law between the several departments of the Government of India: Unofficial No. 2289 of 1879. A Secretary is a Secretary to the Government of India in a particular Department, and is not a Secretary to that Department or to the Member in charge of it. The position assigned to him by rr. 5 and 6 of the *Rules of Business* is thus explained. See also note to s. 43, *Ilbert's Digest*.

Every order issued over the signature of a Secretary, Joint Secretary, Deputy Secretary, Under Secretary or Assistant Secretary to the Government of India, must be presumed to be that of the Governor General in Council, although in practice pressure of time and business renders it necessary that certain matters should be disposed of by the Secretaries themselves, and others by Members of Council without reference to the Governor General or the Council at large: Leg. Dep. U. O. No. 898 of 1901. The term "Secretary" in the Secretaries to Government Act of 1834 covers Deputy, Under and Assistant Secretaries: Unofficial No. 307 of 1914. This general rule is, however, subject to the requirements of special enactments, *e.g.*, an order under Regulation III of 1818 should be signed by a Secretary: Unofficial No. 800 of 1900.

As to the appointment of Secretaries, Joint Secretaries, Deputy Secretaries and Under Secretaries from the Indian Civil Service, see section 98 and Schedule III, *post*. As to the appointment of Secretaries to the Government of India, see section 95, *post*.

Secretaries and Assistant Secretaries to the Railway Board have been empowered to sign for Government by rule under s. 8, 24 & 25 Vict., c. 67 (1861), but the rule so far as it extends to matters lying outside the scope of the Railway Act is of doubtful validity; a proposal to empower the Financial Adviser, Army Department, to sign was dropped, as it was doubted if such a rule would be *intra vires* of s. 8 of the Indian Councils Act, 1861: Leg. Dep. U. O. No. 307 of 1914.

The power to make rules under *sub-section (2)*, which reproduces the provisions of s. 8, Indian Councils Act, 1861,—as to which see s. 8 of the despatch from the Secretary of State of the 9th August, 1861, App. I, *post*,—is conferred on the Governor General in person, and is, no doubt, subject to the general power of control secured to the Secretary of State by sections 2 and 33 *ante*, see Leg. Dep. U. O. No. 795 of

1905. For a similar power conferred on the Governors of Presidencies and Lieutenant-Governors, *see* sections 49 (2), 57, *post*.

Rules made under sub-section (2) are treated as confidential.

For the existing rules, *see Rules of Business, post*.

[East India Company Act, 1772, s. 8; Govt. of India Act, 1833, s. 48.]

41. (1) If any difference of opinion arises on any question brought before a meeting of the Governor General's Executive Council, the Governor General in Council shall be bound by the opinion and decision of the majority of those present, and if they are equally divided, the Governor General or other person presiding shall have a second or casting vote. Procedure in case of difference of opinion.

[Govt. of India Act, 1870, s. 5.]

(2) Provided that whenever any measure is proposed before the Governor General in Council whereby the safety, tranquillity or interests of British India, or of any part thereof, are or may be, in the judgment of the Governor General, essentially affected, and he is of opinion either that the measure proposed ought to be adopted and carried into execution, or that it ought to be suspended or rejected, and the majority present at a meeting of the Council dissent from that opinion, the Governor-General may, on his own authority and responsibility, adopt, suspend or reject the measure, in whole or in part.

(3) In every such case, any two members of the dissentient majority may require that the adoption, suspension or rejection of the measure, and the fact of their dissent, be reported to the Secretary of State, and the report shall be accompanied by copies of any minutes which the members of the Council have recorded on the subject.

[East India Company Act, 1793, s. 49.]

(4) Nothing in this section shall empower the Governor General to do anything which he could not lawfully have done with the concurrence of his Council.

For definition of "Governor General in Council," *see* section 134, *post*.

At the instance of Lord Cornwallis in 1784, the Governor General was, by 26 Geo. 3, c. 16, empowered to override his Council in special cases and to act on his own responsibility, and this provision was re-enacted by ss. 47, 48 and 49 of the East India Company Act, 1793 (33 Geo. 3, c. 52), which were practically superseded by s. 5 of the Government of India Act, 1870. Lord Lytton acted under this section in March, 1879, when he exempted certain imported cottons from customs-duty under s. 23 of the Sea Customs Act, 1875 (Vill. of 1878)—*see* Financial Department Proceedings, June, 1879, Nos. 324-329. His action was approved by Her Majesty's Government—*see* Despatch from Secretary of State, No. 261, dated 17th July, 1879, paragraphs 30-31 (Finance Department Proceedings, March, 1880, Nos. 169-170). *See* notes to s. 44, *Ilbert's Digest*.

For a similar power conferred on Governors of Presidencies, *see* section 50, *post*.

[Indian Councils

42. If the Governor General is obliged to absent himself from any meeting of the Council, by indisposition or any absence of Provision for

Governor General from meetings of Council. other cause, and signifies his intended absence to the Council, Act, 1861, s. 7; Indian Councils Act, 1909, s. 4.]  
 the Vice-President, or, if he is absent, the Senior Ordinary Member present at the meeting, shall preside thereat, with the like powers as the Governor General would have had if present :

Provided that, if the Governor General is at the time resident at the place where the meeting is assembled, and is not prevented by indisposition from signing any act of Council made at the meeting, the act shall require his signature; but, if he declines or refuses to sign it, the like provisions shall have effect as in cases where the Governor General, when present, dissents from the majority at a meeting of the Council.

For "*the like provisions*" in the Proviso, see s. 41 (2), (3), (4), *ante*.

This Act does not re-enact those provisions of s. 6 of the Indian Councils Act, 1861, which empowered the Governor General in Council to nominate a President of the Council during the absence of Governor General on a visit to other parts of India. A President in Council was last appointed under s. 6 on the occasion of the late Lord Dufferin's visit to Burma in 1886. Probably the duty under s. 4 of the Indian Councils Act, 1909, to appoint a Vice-President of Council made the power unnecessary.

By the term "the Senior Member" in s. 7 of the Indian Councils Act, 1861, the Senior *Ordinary* Member was no doubt meant; and the section was in practice so applied (Leg. Dep. U. O. Nos. 445 and 645 of 1913). *Mr. Sinha* (Law Member) was of opinion that the Vice-President is to be deemed the Senior Member of Council; but the Senior Ordinary Member present would probably be entitled to preside in the absence of the Vice-President, see Legislative Department Proceedings, February, 1910, Nos. 1—7; this opinion was reaffirmed in the Legislative Department: See notes dated 20th and 21st July, 1912, in Home Department Proceedings *re* amendment of the Council Regulations.

The precedence conferred on the Vice-President by s. 4 of the Indian Councils Act, 1909, applied only to matters mentioned in ss. 62, 63, Government of India Act, 1833, and ss. 7, 15, Indian Councils Act, 1861; in all other matters the Commander-in-Chief, under the Warrant of Precedence, would apparently take rank above the Vice-President; precedence *per se*, however, confers no title to an officer and gives no right to perform a duty, but merely regulates the marshalling and placing of dignitaries (Leg. Dep. U. O. Nos. 445, 645 of 1913).

As to the Vice-President or the Senior Ordinary Member presiding during the absence of the Governor General, see also s. 89 (4), *post*.

Powers of Governor General in absence from Council. 43. (1) Whenever the Governor General in Council [Indian Councils Act, 1861, s. 6.] declares that it is expedient that the Governor General should visit any part of India unaccompanied by his Executive Council, the Governor General in Council may, by order, authorize the Governor General alone to exercise in his discretion, all or any of the powers which might be exercised by the Governor General in Council at meetings of the Council.

[East India  
Company  
Act, 1793,  
s. 54.]

(2) The Governor General during absence from his Executive Council may, if he thinks it necessary, issue, on his own authority and responsibility, any order, which might have been issued by the Governor General in Council, to any Local Government, or to any officers or servants of the Crown acting under the authority of any Local Government without previously communicating the order to the Local Government; and any such order shall have the same force as if made by the Governor General in Council; but a copy of the order shall be sent forthwith to the Secretary of State and to the Local Government, with the reasons for making the order.

[East India  
Company  
Act, 1793,  
s. 55.]

(3) The Secretary of State in Council may, by order, suspend until further order all or any of the powers of the Governor General under the last foregoing sub-section; and those powers shall accordingly be suspended as from the time of the receipt by the Governor General of the order of the Secretary of State in Council.

For definition of "Governor General in Council", see section 134, *post*. As regards the first part of s. 6 of the Indian Councils Act, 1861, which is not re-enacted, see note to section 42, *ante*. *Ilbert* in the note to s. 47 of his *Digest* is of opinion that the provisions of sub-sections (2) and (3) were practically superseded by the enactment reproduced in sub-section (1), as to which see paragraph 6 of Secretary of State's Despatch dated 9th August, 1861—Appendix II, *post*.

### War and Treaties.

[East India  
Company  
Act, 1793,  
s. 42.]

44. (1) The Governor-General in Council may not, without the express order of the Secretary of State in Council, in any case (except where hostilities have been actually commenced, or preparations for the commencement of hostilities have been actually made against the British Government in India or against any Prince or State dependent thereon, or against any Prince or State whose territories His Majesty is bound by any subsisting treaty to defend or guarantee), either declare war or commence hostilities or enter into any treaty for making war against any Prince or State in India, or enter into any treaty for guaranteeing the possessions of any such Prince or State.

Restriction  
on power of  
Governor  
General in  
Council to  
make war or  
treaty.

(2) In any such excepted case, the Governor General in Council may not declare war, or commence hostilities, or enter into any treaty for making war, against any other Prince or State than such as is actually committing hostilities or making preparations as aforesaid, and may not make any treaty for guaranteeing the possessions of any Prince or State except on the consideration of that Prince or State actually engaging to assist His Majesty against such hostilities commenced or preparations made as aforesaid.



(3) When the Governor General in Council commences any hostilities or makes any treaty, he shall forthwith communicate the same, with reasons therefor, to the Secretary of State.

For a short history of the provisions contained in this section, *see* note to s. 48, *Ilbert's Digest*. In this connection *see* also s. s. 13 (1), 15, 22, *ante*. As to treaties or *sansads* made or granted by the East India Company, *see* section 132, *post*.

As to restrictions on the power of Local Governments to make war or treaty, *see* s. 45 (2), *post*.

## PART V.

### LOCAL GOVERNMENTS.

#### *General.*

Relation of  
Local Govern-  
ments to  
Governor  
General in  
Council.

45. (1) Every Local Government shall obey the orders of the Governor General in Council, and keep him constantly and diligently informed of its proceedings and of all matters which ought, in its opinion, to be reported to him, or as to which he requires information, and is under his superintendence, direction and control in all matters relating to the government of its province.

[East India Company Act, 1772, s. 9; East India Company Act, 1793, ss. 24, 40, 41, 43, 44; Govt. of India Act, 1833, ss. 65, 68.]

(2) No Local Government may make or issue any order for commencing hostilities or levying war, or negotiate or conclude any treaty of peace or other treaty with any Indian Prince or State (except in cases of sudden emergency or imminent danger when it appears dangerous to postpone such hostilities or treaty), unless in pursuance of express orders from the Governor General in Council or from the Secretary of State; and every such treaty shall, if possible, contain a clause subjecting the same to the ratification or rejection of the Governor General in Council. If any Governor, Lieutenant-Governor or Chief Commissioner, or any member of a Governor's or Lieutenant-Governor's Executive Council, wilfully disobeys any order received from the Governor General in Council under this sub-section, he may be suspended or removed and sent to England by the Governor General in Council, and shall be subject to such further pains and penalties as are provided by law in that behalf.

(3) The authority of a Local Government is not superseded by the presence in its province of the Governor General.

[Govt of India Act, 1833, s. 67.]

For definition of "Local Government," *see* s. 134, *post*; the expression as used in Indian Acts is defined in s. 3 (29), General Clauses Act, 1897 (X of 1897).

The provisions re-enacted by this section were originally enacted to secure proper control by the Government of Bengal over the Governments of

the two other Presidencies of Madras and Bombay—*see* note to s. 40, *Ilbert's Digest*.

As to such control, *see* following Despatches of Court of Directors or Secretary of State, namely (a) No 3, dated 28th March, 1838 (Bombay), (b) dated 31st January, 1844 (Bengal), (c) No. 126, dated 12th December, 1855 (Bengal), (d) No. 129, dated 19th November, 1874 (Bombay), and (e) No. 13, dated 6th April, 1877 (Bombay).

The limits of the Government of India's power of control have been the subject of considerable discussion. Law Members have been inclined to advise that this power of control should be cautiously used: *Scoble, Minutes* Nos. 40 and 85 (Leg. Dep. U. O. Nos. 44 of 1888, 284 of 1889); *Ilbert* (Unofficial No. 433 of 1885). *Hobhouse* observes that the power "is one of great delicacy and only to be exercised under very exceptional circumstances;" (Unofficial No. 643 of 1875.) And it has been said that it merely reserves the right to interfere, as contrasted with a statutory requirement of sanction, which contemplates the direct association of the Government of India with the matter (Unofficial No. 24 of 1912). However, it appears to be generally accepted that the strict legal position is, that, unless expressly barred by Statute, the Government of India has power to interfere with any executive order of a subordinate Government, as and when it thinks fit.

The power of control extends to the statutory functions of Local Governments (Unofficial Nos. 39 of 1884, 944 of 1876, 217 of 1913, 362 of 1914). It extends also to the attitude of the Local Government towards legislation in the Local Council (Unofficial No. 547 of 1912), even where an enactment declares a decision of a Local Government to be final (B. Proceedings, September 1885, Nos. 113 and 114); nothing done by a legislature in India can limit it (Unofficial Nos. 944 of 1876; 390 of 1893). Such control may be exercised by Standing Orders or Rules (Unofficial No. 688 of 1887) even in the case of statutory powers (Unofficial No. 362 of 1914). The only limitation appears to be in regard to the exercise of judicial or quasi-judicial functions (Unofficial No. 39 of 1884; A. Proceedings, July, 1885, Nos. 1-14; B. Proceedings, September, 1885, Nos. 113 and 114).

It was formerly said that a reservation of the control of the Governor General in Council was only made in an Indian Act when the discretion confided to the Local Government was of a judicial nature (A. Proceedings, July 1885, Nos. 1-14), but in modern practice this rule does not hold good (Unofficial No. 362 of 1914).

The Madras and Bombay Armies Act, 1893 (56 & 57 Vict., C. 62) abolished the offices of Commander-in-Chief in Madras and Bombay, and transferred the military control and authority of Governors in Council to the Governor General in Council—*see* s. 1(2) of that Act which is explained by s. 4 of the Army Annual Act, 1896 (59 & 60 Vict., C. 2).

As to the power of the Governor General in Council to make war or treaty, *see* s. 44, *ante*.

For other provisions relating to trial in England, *see* ss. 126 and 127, *post*.

### Governorships.

46. (1) The Presidencies of Fort William in Bengal, Fort St. George and Bombay are, subject to the provisions of this Act, governed by the Governors in Council of those Presidencies respectively, and the two former Presidencies are in this Act referred to as the Presidencies of Bengal and Madras.

Governments of Bengal, Madras and Bombay.

[East India Company Act, 1772, s. 7; East India Company Act, 1793, s. 24; Govt. of India Act, 1833, s. 56; Govt. of India Act, 1912, s. 1(1).]

(2) The Governors of Bengal, Madras and Bombay are [Govt. of India Act, 1858, s. 29.] appointed by His Majesty by Warrant under the Royal Sign Manual.

(3) The Secretary of State may, if he thinks fit, by order [Govt. of India Act, 1858, ss. 57, 59.] revoke or suspend, for such period as he may direct, the appointment of a Council for any or all of those Presidencies; and whilst any such order is in force, the Governor of the Presidency to which the order refers shall have all the powers of the Governor thereof in Council.

*"Subject to the provisions of this Act"—see sections 21, 33, 45, 59.*

The old Presidency of Bengal had much wider limits than the present Presidency, and practically included all British India outside the Presidencies of Madras and Bombay; it was administered by the Governor General of India who was himself the Governor of the Presidency.

The Governors of the Presidencies retain the right to address the Secretary of State direct—see section 14 *ante*.

The power conferred by sub-section (3) does not appear to have ever been exercised.

As to the power of the Secretary of State to fix, subject to a maximum, the number of members of a Governor's Executive Council, see section 47(1), *post*. "Governor in Council" is defined in s. 134, *post*.

Members of  
Executive  
Councils.

47. (1) The members of a Governor's Executive Council [East India Company Act, 1793, ss. 24, 25, 33; Govt. of India Act, 1833, ss. 56, 57; Govt. of India Act, 1869, s. 8; Indian Councils Act, 1909, s. 2(1); Govt. of India Act, 1912, s. 1(1).] shall be appointed by His Majesty by Warrant under the Royal Sign Manual, and shall be of such number, not exceeding four, as the Secretary of State in Council directs.

(2) Two at least of them must be persons who at the time of their appointment have been for at least twelve years in the service of the Crown in India.

(3) Provided that, if the Commander-in-Chief of His Majesty's forces in India (not being likewise Governor General) happens to be resident at Calcutta, Madras or Bombay, he shall, during his continuance there, be a member of the Governor's Council.

The number of members of local Executive Councils is now fixed at three.

The Court of Directors exercised the power given to it by s. 57, Government of India Act, 1833 (3 & 4 Will. 4, C. 85) by their Political despatches to the Government of India, and to the Government of Madras, dated the 27th of December, 1833, which directed that the subordinate Governments of Madras and Bombay were to consist of a Governor and a Council, the Council to consist of two members being Civil Servants, with the addition of the Commander-in-Chief when the Court should appoint him to a seat in Council, otherwise of two Civil Servants alone—see despatch from Secretary of State to Government of India, 21st December, 1878; Legislative Department Proceedings, March 1879, No. 8.

As to the power of the Secretary of State to revoke or suspend the appointment of a Governor's Executive Council, see section 46(3), *ante*.

*"Not being likewise Governor General."* Four Governors General—Lord Cornwallis (1793), Lord Wellesley (1798 and 1805), Lord Hastings (1813), and Lord William Bentinck (1828)—were appointed to be also Commander-in-Chief; but, with these exceptions, the offices have been kept distinct. (Caraduff's *Military and Cantonment Law*.)

The case provided for in sub-section (3) does not arise under modern conditions, but should it arise, the Commander-in-Chief would be an *ordinary* member—*cf.* s. 37(1), *ante.* See also s. 86, *post.*

The office of Provincial Commander-in-Chief was abolished by the Madras and Bombay Armies Act, 1893 (56 & 57 Vict., C. 62).

For discussion of the question as to whether a member of a local Executive Council should or can also hold office as member of the Board of Revenue, *see* Leg. Dep. U. O. Nos. 51, 213, 244 of 1912. The Secretary of State held that there was no legal obstacle to a member holding both offices, but that there are political objections to his sitting as a Revenue Court to hear appeals in which counsel appear.

[Indian Councils Act, 1909, s. 4; Govt. of India Act, 1912, s. 1(1).] **48.** Every Governor of a Presidency shall appoint a Vice-President of his Executive Council to be Vice-President thereof. Vice-President of Council.

The power of appointing a Vice-President is vested in the Governor personally. The section only authorises the appointment of a particular named member, but does not permit the appointment of a member in charge of a particular Department *ex-officio* to be Vice-President.

The Vice-President, it will be noted, is Vice-President of the Executive Council, as well as of the Legislative Council—*see* ss. 73(1) and 75(3), *post.* As to powers and duties of the Vice-President during the absence of the Governor, *see* ss. 50, 51, 75, *post.*

[East India Company Act, 1793, s. 39; East India Company Act, 1813, s. 79; Indian Councils Act, 1861, s. 28; Govt. of India Act, 1912, s. 1(1).] **49** (1) All orders and other proceedings of the Governor in Council of any Presidency shall be expressed to be made by the Governor in Council, and shall be signed by a Secretary to the Government of the Presidency, or otherwise, as the Governor in Council may direct. Business of Governor in Council.

(2) A Governor may make rules and orders for the more convenient transaction of business in his Executive Council, and every order made or act done, in accordance with those rules and orders, shall be treated as being the order or the act of the Governor in Council.

For similar provisions relating to the Governor General in Council, *see* s. 40, *ante* and notes thereto.

Sub-section (1) follows the Secretaries to Government Act, 1834 (II of 1834).

[Indian Councils Act, 1909, s. 2(2); Govt. of India Act, 1912, s. 1(1).] **50.** (1) If any difference of opinion arises on any question brought before a meeting of a Governor's Executive Council, the Governor in Council shall be bound by the opinion and decision of the majority of those present, and if they are equally divided, the Governor or other person presiding shall have a second or casting vote. Procedure in case of difference of opinion.

[East India Company Act, 1793, ss. 47, 48, 49; Govt. of India Act, 1912, s. 1(1).] (2) Provided that, whenever any measure is proposed before a Governor in Council whereby the safety, tranquillity or interests of his Presidency, or of any part thereof, are or may be, in the judgment of the Governor, essentially affected, and he is of opinion either that the measure proposed ought to be adopted and carried into execution, or that it ought to be suspended or rejected, and the majority present at a meeting of the Council dissent from that opinion, the Governor may, on his own authority and responsibility, by

order in writing, adopt, suspend or reject the measure, in whole or in part.

(3) In every such case, the Governor and the members of the Council present at the meeting shall mutually exchange written communications (to be recorded at large in their secret proceedings) stating the grounds of their respective opinions, and the order of the Governor shall be signed by the Governor and by those members.

(4) Nothing in this section shall empower a Governor to do anything which he could not lawfully have done with the concurrence of his Council.

*Cf.* section 41, *ante*, which relates to similar powers of the Governor-General. See also notes to s. 53, *Ilbert's Digest*.

Provision for  
absence of  
Governor  
from meetings  
of Council.

51. If a Governor is obliged to absent himself from any meeting of his Executive Council, by indisposition or any other cause, and signifies his intended absence to the Council, the Vice-President, or, if he is absent, the Senior Civil Member present at the meeting, shall preside thereat, with the like powers as the Governor would have had if present:

[Govt. of India Act, 1800, s. 12; Indian Councils Act, 1861, s. 34; Indian Councils Act, 1909, s. 4; Govt of India Act, 1912, s. 1(1).]

Provided that, if the Governor is at the time resident at the place where the meeting is assembled, and is not prevented by indisposition from signing any act of Council made at the meeting, the act shall require his signature; but, if he declines or refuses to sign it, the like provisions shall have effect as in cases where the Governor, when present, dissents from the majority at a meeting of the Council.

The words "Senior Civil Member" are taken from s. 34 of the Indian Councils Act, 1861, where they were intended to exclude the Provincial Commander-in-Chief, an office which has been abolished by 56 & 57 Vict., C. 62, but *see* s. 47(3), *ante*.

For "*the like provisions*" in the Proviso, *see* section 50(2), (3), (4), *ante*. Under section 48, *ante*, every Governor shall appoint a Vice-President of Council. *Cf.* section 42, *ante*, which enacts similar provisions for the Governor-General.

The Province  
of Agra.

52. The Secretary of State in Council may, if he thinks fit, direct that the province of Agra be constituted a Presidency under a Governor in Council, and, if that direction is given, the Presidency shall be constituted on the terms of the Government of India Act, 1853, and section 4 of the Government of India Act, 1854.

16 & 17 Vict.,  
C. 95.  
17 & 18 Vict.,  
C. 77.

[Govt. of India Act, 1833, ss. 38, 56; Govt. of India Act, 1853, ss. 15, 19.]

The two sections mentioned here have been included for repeal in the Fourth Schedule, *post*, but, notwithstanding such inclusion, their provisions are, in effect, kept in force for the purposes of this section.

This section reproduces an old existing power, but is probably almost unworkable. The province of Oudh has not been included, there appears to be no provision for a Legislative Council, and the status of the Executive Council would be that of a Governor's Council as it was in 1854—*see* also note to s. 73, *post*. The omission of these provisions from the Consolidation Bill, 1914, was suggested, but they were retained on political grounds—*see Notes, Serial No. 15, Legislative Department, A. Proceedings, March, 1915, Nos. 23—31.*

*Lieutenant-Governorships and other Provinces.*

[India  
(North-West  
Provinces)  
Act, 1835,  
s. 2; Govt.  
of India Act,  
1853, ss. 15,  
17, Indian  
Councils  
Act, 1861,  
ss. 46, 49.]

53. (1) Each of the following provinces, namely, those known as Bihar and Orissa, the United Provinces of Agra and Oudh, the Punjab and Burma is, subject to the provisions of this Act, governed by a Lieutenant-Governor, with or without an Executive Council. Lieutenant-Governorships.

(2) The Governor General in Council may, by notification, with the sanction of His Majesty previously signified by the Secretary of State in Council, constitute a new province under a Lieutenant-Governor.

See notes (a), (b), (c) to s. 55, *Ilbert's Digest*.

The words "*subject to the provisions of this Act*" in sub-section (1) refer to sections 21, 33, 45, 52, 55 (3), 59, etc., of the Act.

As to power to create Executive Councils for Lieutenant-Governors, see s. 55, *post*.

As to constitution of Legislative Councils for Lieutenant-Governors with or without Executive Councils, see sections 73, 76, 77, 78, *post*.

[India  
(North-West  
Provinces)  
Act, 1835,  
s. 2; Govt.  
of India Act,  
1853,  
ss. 15, 16, 17;  
Govt. of  
India Act,  
1854, s. 4;  
Govt. of  
India Act,  
1858,  
s. 29; Indian  
Councils  
Act, 1861,  
ss. 43, 49.]

54. (1) A Lieutenant-Governor is appointed by the Governor General with the approval of His Majesty. Lieutenant-Governors.

(2) A Lieutenant-Governor must have been, at the time of his appointment, at least ten years in the service of the Crown in India.

(3) The Governor General in Council may, with the sanction of His Majesty previously signified by the Secretary of State in Council, declare and limit the extent of the authority of any Lieutenant-Governor.

See notes (d), (e), (f), to s. 55, *Ilbert's Digest*.

The power to appoint a Lieutenant-Governor is conferred on the Governor General personally by sub-section (1). There is, however, nothing irregular in his making the appointment in consultation with his Council, see *Marne, Minutes*, No. 32 (1865).

As to the intention of the provisions re-enacted in sub-section (3), see Legislative Department B. Progs., October, 1883, No. 16.

55. (1) The Governor General in Council, with the approval of the Secretary of State in Council, may, by notification, create a Council in any province under a Lieutenant-Governor, for the purpose of assisting the Lieutenant-Governor in the executive government of the province, and by such notification— Power to create Executive Councils for Lieutenant-Governors.

(a) make provision for determining what shall be the number (not exceeding four) and qualifications of the members of the Council, and

(b) make provision for the appointment of temporary or acting members of the Council during the absence of any member from illness or otherwise, and for the procedure to be adopted in case of a difference of opinion between a Lieutenant-

Governor and his Council, and in the case of equality of votes, and in the case of a Lieutenant-Governor being obliged to absent himself from his Council by indisposition or any other cause :

Provided that, before any such notification is published, a draft thereof shall be laid before each House of Parliament for not less than sixty days during the session of Parliament, and if, before the expiration of that time, an address is presented to His Majesty by either House of Parliament against the draft or any part thereof, no further proceedings shall be taken thereon, without prejudice to the making of any new draft.

(2) Every notification under this section shall be laid before both Houses of Parliament as soon as may be after it is made. [Indian Councils Act, 1909, s. 7.]

(3) Every member of a Lieutenant-Governor's Executive Council shall be appointed by the Governor General, with the approval of His Majesty. [Indian Councils Act, 1909, s. 3 (4).]

The concluding portion of sub-section (1) (b) should be read with s. 56 *post*. Bihar and Orissa is at present the only Lieutenant-Governorship with an Executive Council.

Under s. 2, Government of India Act, 1912, an Executive Council was constituted for Bihar and Orissa, with effect from 1st August 1912, by proclamation issued under Home Department Notification No. 1628, dated 1st August, 1912. Members of the Executive Council were appointed by the Governor General by Notification No. 1629 of the same date. For forms of notifications under sub-section (1) and sub section (3), see App. XII, Nos. 15 and 16, *post*.

In 1914, the creation of an Executive Council for the Lieutenant-Governorship of the United Provinces was proposed by a majority of the Governor General's Executive Council and approved by the Secretary of State, and a draft Proclamation was, under s. 3 (2), proviso, of the Indian Councils Act, 1909, laid before Parliament. The proposal was, however, opposed in Parliament and was not given effect to—see Home Department, A. Proceedings, October 1914, Nos. 128—131.

As to addresses to His Majesty by either House of Parliament against draft orders—see *May's Parliamentary Practice*, Ed. 11th, pp. 543, 544.

For discussion of the question as to whether a member of a local Executive Council should or can also hold office as member of the Board of Revenue, see Legislative Department un-official Nos. 51, 213, 244 of 1912. See also note under s. 47, *ante*.

Vice-President of Council.

56. A Lieutenant-Governor who has an Executive Council shall appoint a member of the Council to be Vice-President thereof, and that Vice-President shall preside at meetings of the Council in the absence of the Lieutenant-Governor. [Indian Councils Act, 1909, s. 4.]

This section is to be read with the concluding portion of s. 55 (1) (b), *ante*. See also sections 73 (1), 78, *post*.

The power of appointing a Vice-President is vested in the Lieutenant-Governor personally; the section only authorises the appointment of a particular named member; it does not permit the appointment of the member charge of a particular Department *ex-officio* to be Vice-President.

As to the appointment of a Vice-President of their Legislative Councils by other Lieutenant-Governors and by Chief Commissioners, *see* s. 78, *post*.

[Indian Councils Act, 1909, s. 3 (3).]

57. A Lieutenant-Governor who has an Executive Council may, with the consent of the Governor General in Council, make rules and orders for the more convenient transaction of business in the Council, and every order made, or act done in accordance with such rules and orders, shall be treated as being the order or the act of the Lieutenant-Governor in Council.

Business of Lieutenant-Governor in Council.

For similar provisions relating to the Governor General and to Governors, *see* ss. 40, 49, *ante*, and notes thereto. For definition of "*Lieutenant-Governor in Council*," *see* s. 134, *post*.

Section 3 (3), Indian Councils Act, 1909, was practically a reproduction of ss. 8 and 28 of the Indian Councils Act, 1901, the object of which, as explained in paragraphs 7, 8 and 29 of Sir Charles Wood's despatch of the 9th August, 1861 (*see* Appx. II, *post*), was to provide for the more convenient transaction of business by abolishing the cumbrous mode under which every paper had to be seen and every order had to be approved by every member; a rule providing that business of any particular class (making of appointments) should be assigned to the Lieutenant-Governor alone would not be an illegal rule. But the Home Member (Sir J. L. Jenkins) held, and Council agreed with him, that the intention in constituting an Executive Council under the section being that the administration shall be carried on by the Lieutenant-Governor in Council, a rule of business providing that business of the most important kind might be transacted by the Lieutenant-Governor alone or by a single member of Council would be unconstitutional—Leg. Dep. U. O. No. 613 of 1910.

58. Each of the following provinces, namely, those known as Assam, the Central Provinces, the North-West Frontier Province, British Baluchistan, Delhi, Ajmer-Merwara, Coorg and the Andaman and Nicobar Islands, is, subject to the provisions of this Act, administered by a Chief Commissioner.

Chief Commissioners.

The words "*subject to the provisions of this Act*" refer to ss. 21, 33, 45, 53 (2), etc.

The Delhi enclave was formed into a Chief Commissionership under the provisions re-enacted in section 59, *post*, in consequence of the transfer of the capital from Calcutta to Delhi—*see* the Delhi Laws Act, 1912 (XIII of 1912).

The Resident at Mysore is *ex-officio* Chief Commissioner for Coorg; the Governor General's Agent for Rajputana is *ex-officio* Chief Commissioner for Ajmer-Merwara, and the Chief Commissioners of British Baluchistan and of the North-West Frontier Province are Governor General's Agents for dealing with neighbouring tribes outside British India. Aden includes the island of Perim and is attached to Bombay—*see* the Aden Laws Regulation (II of 1891).

[Govt. of India Act, 1854, s. 3.]

59. The Governor General in Council may, with the approval of the Secretary of State, and by notification, take any part of British India under the immediate authority and management of the Governor General in Council, and thereupon give all necessary orders and directions respecting the administration of that part, by placing it under a Chief Commissioner, or by otherwise providing for its administration.

Power to place territory under authority of Governor General in Council.



For the origin, effect and application of the power conferred by s. 3, Government of India Act, 1854, which is re-enacted in this section, see note to s. 50, *Ilbert's Digest*.

The power may also be used to effect the annexation of a Chief Commissionership to a Lieutenant-Governorship; see case of abolition of Chief Commissionership of Oudh, Leg. Dep. U. O. Nos. 850 and 877 of 1901.

With respect to the proceedings which were taken for constituting the Chief Commissionership of Assam in 1883—see Legislative Department A. Proceedings, September, 1873, Nos. 101 to 103.

S. 3, Government of India Act, 1854, was used to constitute the three most recently formed Chief Commissionerships, *vide* the following Proclamations in the *Gazette of India*: North-West Frontier Province No. 5780, 25th October, 1901; Assam, No. 291, 22nd March, 1912, and Delhi, No. 911, 17th September, 1912. For a discussion on that section and s. 40, Indian Councils Act, 1861, and s. 4, Government of India Act, 1865, see *Erle Richards' Minutes*, No. 16; Home Department Pub. A. Proceedings, February, 1895, Nos. 155-167. Read together the sections give power to abolish a Lieutenant-Governorship, though recognition by Parliamentary legislation is desirable in such a case (Opinion of *Advocate-General*): Leg. Dep. U. O. No. 42 of 1912.—See now ss. 53 (2), 54 (3), and 59 *ante*, and 60, *post*.

“Give all necessary orders and directions”—the directions may be given from time to time—see Legislative Department A. Proceedings, May 1883, Nos. 39 to 51, K.-W.

As to the constitution of a Legislature for a Chief Commissionership, see s. 77 (2), *post*.

### Boundaries.

Power to declare and alter boundaries of provinces.

60. The Governor General in Council may, by notification, declare, appoint or alter the boundaries of any of the provinces into which British India is for the time being divided, and distribute the territories of British India among the several provinces thereof in such manner as may seem expedient, subject to these qualifications, namely:—

- (1) an entire district may not be transferred from one province to another without the previous sanction of the Crown, signified by the Secretary of State in Council; and
- (2) any notification under this section may be disallowed by the Secretary of State in Council.

See notes to s. 57, *Ilbert's Digest*.

This section deals only with alteration of boundaries in British India. The demarcation of boundaries as between British India and a Native State can probably be effected by the Crown without legislation. See the Bhavnagar case, *Damodar Gordhan v. Deoram Kanji*, 1875, L. R. 3 Ind. App. 102, and the Bhavnagar Act (India Act XX of 1875) explained; *Lachmi Narain v. Partap Singh* (1878), L. L. R. 2 All., p. 32. As to retrocession of territory, see the Jhansi and Morar Act (XVII of 1886), and *Abdulla v. Mohan Gair*, L. L. R. 11 All. 490. When the Straits Settlements were transferred from India to the Colonial Office, the transfer was effected by the Straits Settlements Act, 1866 (29 & 30 Vict., C. 115).

[Govt. of India Act, 1800, s. 1; Govt. of India Act, 1833, s. 38; Govt. of India Act, 1853, s. 17; Indian Councils Act, 1861, ss. 47, 49; Govt. of India Act, 1865, ss. 4, 5; Govt. of India Act, 1912, s. 4 (2).]

[Govt. of India Act, 1854, s. 3, proviso ; Indian Councils Act, 1891, s. 47, proviso ; Govt. of India Act, 1912, s. 3.]

61. An alteration in pursuance of the foregoing provisions of the mode of administration of any part of British India, or of the boundaries of any part of British India, shall not affect the law for the time being in force in that part.

See notes to s. 58, *Ilbert's Digest*.

[Indian Presidency-towns Act, 1815, s. 1 ; Govt. of India Act, 1912, s. 1. (2).]

62. The Governor of Bengal in Council, the Governor of Madras in Council, and the Governor of Bombay in Council may, with the approval of the Secretary of State in Council, and by notification, extend the limits of the towns of Calcutta, Madras and Bombay, respectively; and any Act of Parliament, letters patent, charter, law or usage conferring jurisdiction, power or authority within the limits of those towns respectively shall have effect within the limits as so extended.

The limits of Calcutta were fixed by Proclamation, dated 10th September 1794, and extended by Notification, dated 15th October 1913. The limits of the town of Madras were fixed by Proclamation, dated 2nd November 1798.

## PART VI.

### INDIAN LEGISLATION.

#### *The Governor-General in Legislative Council.*

[Indian Councils Act, 1861, ss. 9, 10 ; Govt. of India Act, 1870, s. 3 ; Indian Councils Act, 1909, s. 1.]

63. (1) For purposes of legislation the Governor-General's Council shall consist of the members of his Executive Council with the addition of members nominated or elected in accordance with rules made under this Act. The Council so constituted is in this Act referred to as the Indian Legislative Council.

(2) The number of Additional Members so nominated or elected, the number of such members required to constitute a quorum, the term of office of such members, and the manner of filling casual vacancies occurring by reason of absence from India, inability to attend to duty, death, acceptance of office, or resignation duly accepted, or otherwise, shall be such as may be prescribed by rules made under this Act :

Provided that the aggregate number of members so nominated or elected shall not exceed the number specified in that behalf in the second column of the First Schedule to this Act.

(3) At least one-half of the Additional Members of the Council must be persons not in the civil or military service

of the Crown in India; and, if any Additional Member accepts [any office of profit] under the Crown in India, his seat as an Additional Member shall thereupon become vacant.

(4) When and so long as the Indian Legislative Council assembles in a province having a Lieutenant-Governor or Chief Commissioner, he shall be an Additional Member of the Council, in excess, if necessary, of the aggregate number of nominated or elected Additional Members prescribed by this section.

(5) The Additional Members of the Council are not entitled to be present at meetings of the Governor-General's Executive Council.

(6) The Governor-General in Council may, with the approval of the Secretary of State in Council, make rules as to the conditions under which and manner in which persons resident in India may be nominated or elected as Additional Members of the Indian Legislative Council, and as to the qualifications for being, and for being nominated or elected, an Additional Member of that Council, and as to any other matter for which rules are authorised to be made under this section, and also as to the manner in which those rules are to be carried into effect. [Indian Councils Act, 1909, ss. 6, 7.]

[(6a) Rules made under this section may provide for the final decision of doubts or disputes as to the validity of an election.]

(6b) Subject to any rules made under this section, any person who is a ruler or subject of any State in India shall be eligible to be nominated a member of a Legislative Council.]

(7) All rules made under this section shall be laid before both Houses of Parliament as soon as may be after they are made, and those rules shall not be subject to repeal or alteration by the Governor-General in Legislative Council.

See notes to s. 60, *Ilbert's Digest*.

There is no Legislative Council entirely separate and distinct from the Executive Council—A. Progs., July, 1883, No. 1.

The expression "legislation" in sub-section (1) does not include the making of Regulations under s. 71. A third class of legislation is the promulgation under s. 72 of Ordinances by the Governor-General personally.

The words "any office of profit" in sub section (3) were substituted for "office" by the Government of India (Amendment) Act, 1916 (6 and 7 Geo. 5, c.), Sch. I, to make it clear that such persons as Honorary Sheriffs, Honorary Magistrates or Volunteers are not to be disqualified under the sub-section. For definition of "office" see s. 134, *post*.

The terms "Indian Legislative Council" and "Governor-General in Legislative Council" as used in this section are new and take the place of the expressions "the Legislative Council of the Governor-General" and "the Governor-General in Council at meetings for the purpose of making laws and regulations," respectively, as used in the repealed Indian Councils Acts, 1861 to 1909.

The proviso to sub-section (2) is governed by the provisions of sub-section (4). Under sub-section (4), the Lieutenant-Governor of the Punjab is an Additional Member of Council during the Simla session and the Chief Commissioner of Delhi is an Additional Member during the Delhi session.

The term "non-official persons" which occurred in s. 10, proviso, of the Indian Councils Act, 1861, is not used in sub-section (3), though the term is used in the Council Regulations which further safeguard the representation of "non-officials" by providing in Regulation I.-B. that not more than twenty-eight of the nominated members shall be "officials," though subject to the proviso that the majority of all the members shall be "officials."

The expression "non-official persons" was apparently intended to indicate persons independent of the executive Government; and taking this view, the Advocate-General (*Mr. Woodroffe*) advised, on the 24th June, 1899, that the description covered officials of a High Court, such as an Official Trustee, an Official Assignee, and a Clerk of the Crown, appointed by a Chief Justice. *Mr. Woodroffe* also advised, on the 29th idem, that the "civil service of the Crown in India" referred to in section 10 of the Indian Councils Act, 1861, meant the Covenanted Civil Service of India, and that the word "official" meant a person in either the civil or the military service of the Crown in India. But a different opinion was obtained from several other Counsel in Calcutta—see Home Department's Pros. (Public), July, 1899, Nos. 440—453. See also the ruling given by the Law Member (*Mr. Sinha*) that the expression "the Civil Service of the Crown in India" does not relate exclusively to the Covenanted Civil Service of India, but is applicable to all persons in the service of the Crown—other than persons in military service, and that a Government pleader or a public prosecutor must be regarded as an official person so long as he holds office as such—Legislative Department's unofficial No. 78 of 1910. A Government Treasurer who performs certain duties to Government in return for a salary or other remuneration is an "official" and as such ineligible for election under the Council Regulations—see Legislative Department unofficial No. 738 of 1912. As to objections to inserting a definition or explanation of the word "official" in the Regulations—see Leg. Dep. U. O. Nos. 39 and 232 of 1914.

*Sir A. Miller* (Law Member), differing from *Sir P. Hutchins* (Home Member) and others, held the opinion that a Sheriff in India is not qualified to sit as a non-official Additional Member. The words "office under the Crown" have in England a technical meaning, implying conferment by personal delivery of a seal or other symbol, or by patent, commission or warrant under the Royal Sign Manual. But they can scarcely be given so restricted a sense here—See Leg. Dep. U. O. No. 774 of 1900. The office of Advocate-General is, of course, an office under the Crown, and the Advocate-General can sit only as an official.—See Legislative Department's B. Pros., December, 1899, Nos. 118—120.

*The Law Officers of the Crown* advised that the late Mr. Gokhale did not accept "office under the Crown" by serving on a Royal Commission, although remunerated for such services: Leg. Dep. A. Pro., June, 1913, Nos. 31-35.

For forms of notifications nominating or publishing the election of Additional Members, see Appendix XII, Nos. 8 and 9, *post*.

As to the allowances of Additional Members, see Resolution of the Government of India, Finance Department, No. 3274 C. S. R.,\* dated

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\* Article 1148 reproduces the Resolution No. 3274 C. S. R., mentioned above.

31st May, 1911, in Legislative Department, Pros. July, 1911, Nos. 7—8 : also Article 542 of the *Civil Service Regulations*.

An Official Additional Member selected for his knowledge of a particular Province is not the representative or mouthpiece of the administration of that Province ; and the Local Government and its subordinate officers do not correspond with him officially on matters of legislation. See para. 3 of Legislative Department's letter to the Government of Bengal No. 1527, dated the 13th December, 1878—*Selection of Papers relating to the Constitution and functions of the Indian Legislative Council*, at p. 278.

In all matters in which the question is put to the vote official Additional Members are required to support the Government, both by speech and vote, or to resign their seats—see Home Department Pros. 1900 Misc., Conf. File No. XVI and *Mr. Macpherson's* note, dated the 9th August, 1911, in Legislative Department Pros. (Confidential), September, 1911, Nos. 34—39 ; and although, previous to the enlargement of the Council under the Indian Councils Act, 1909 (9 Edw. 7, c. 4), a certain amount of latitude of speech was enjoyed by official Additional Members from the Provinces at the Budget debate, their position in regard to such debates must now be considered to be the same as their position in regard to other debates where it is well settled that they are bound to support the Government unreservedly, except in cases where permission is expressly given to official Additional Members to vote as they please.

As to the degree of freedom of speech allowed to official Additional Members from the Provinces—see the correspondence with the Secretary of State set out in Appendix X, *post*.

For a discussion of the question whether official Members are entitled to vote against the declared policy of the Government of India—see Leg. Dep. U. O. 653 of 1912. For a discussion of the question of the freedom of voting of “official” Additional Members—see Leg. Dep. U. O. 44 of 1914.

Under section 134 (7), *post*, “rules made under this Act” include the existing Regulations for the nomination and election of Additional Members of the Imperial Legislative Council which were made under s. 6 of the Indian Councils Act, 1909. As to these Regulations the Law Officers of the Crown have advised that it is not open to the Government of India to reserve power to prescribe by notifications the procedure in respect of details for carrying out the election of members of the Imperial or Provincial Councils, and that all rules for those purposes must be approved by the Secretary of State in Council, and laid before both Houses of Parliament—Home Department, Public A. Proceedings, August, 1909, Nos. 222—227. The Regulations accordingly incorporate (in Schedules annexed to them) rules containing every detail of election procedure and all forms.

As to sub-section (6) the only qualification for being nominated or elected which the sub-section lays down is that the person must be resident in India ; this qualification was required by s. 6 of the Indian Councils Act, 1909. It is now provided that a person who is ordinarily resident in India, but is at the time temporarily out of India, may be regarded as resident in India, see Leg. Dep. U. O. Nos. 314, 340, 422 of 1897 and Nos. 769 and 807 of 1900. For other qualifications see the Regulations. Under the amended Regulations a person cannot be a member of both the Imperial Legislative Council and a Local Legislative Council.

The expression “the Government-General in Council” in sub-section (6) refers to the Executive Council—see definition in s. 134 (1), *post*.

Sub-sections (6 a) and (6 b) were inserted by s. 1 of the Government of India (Amendment) Act, 1916, s. 1, *post*.

Sub-section (6a) was inserted to confirm the existing rules for determining the validity of elections. See s. 1(3) of the Act of 1916, *post*.

As regards sub-section (6 b), the eligibility conferred is new. The Regulations too are silent as to the eligibility for nomination of rulers or subjects of Native States. Such subjects not being British subjects were strictly speaking not eligible for nomination to the Council, though it has been the practice to nominate subjects of Native States both to the Imperial and the Local Legislative Councils. Sub-section (6 b) makes it clear that such persons are eligible and past nominations are validated by s. 1(3) of the Government of India (Amendment) Act, 1916, referred to above.

As to resignations by an Additional Member, and power to declare his seat vacant, see section 93, *post*.

[Indian Councils Act, 1861, s. 17.] **64. (1)** The Indian Legislative Council shall assemble at Meetings, such times and places as the Governor-General in Council appoints.

(2) Any meeting of the Council may be adjourned, under the authority of the Governor-General in Council, by the Governor-General or other person presiding.

[Indian Councils Act, 1861, s. 15; Indian Councils Act, 1909, ss. 4, 5 (2).] (3) In the absence of the Governor-General from any meeting of the Council the person to preside thereat shall be the Vice-President of the Council, or, in his absence, the Senior Ordinary Member of the Council present at the meeting, or during the discussion of the annual financial statement or of any matter of general public interest, [or when questions are asked], the Vice-President or the member appointed to preside in accordance with rules made under this Act.

[Indian Councils Act, 1861, s. 15.] (4) If any difference of opinion arises on any question brought before a meeting of the Council, the person presiding shall have a second or casting vote.

See notes to ss. 61, 62, *Ilbert's Digest*.

"*Indian Legislative Council*"—see s. 63 (1), *ante*.

"*Governor-General in Council*" refers to the Executive Council—see s. 134 (1), *post*.

As to "*the Vice-President*" and "*the Senior Ordinary Member*" see ss. 36, 37, 38 *ante*, and cf. s. 42 *ante*.

As to the "*financial statement*" and "*Member appointed to preside in accordance with rules made under this Act*" see s. 67 (3), *post*.

The words "*or when questions are asked*" were inserted in sub-section (3) by the Government of India (Amendment) Act, 1916, Sch. I—cf. s. 67 (3), *post*.

As to whether a meeting of the Legislative Council may be summoned when there is no strictly legislative business to be brought forward, see note under s. 67, *post*.

It was intended that the Legislative Council should not sit permanently for the purpose of making laws and regulations, but should be called together by summons from the head of the Government when projects of law, prepared by the proper officers under the supervision of the Executive Government, are ready for discussion. See para. 21 of the despatch from the Secretary of State, dated the 9th August, 1861, App. II, *post*.

Since the transfer of the capital to Delhi, the practice has been for the Legislative Council to assemble in Delhi in January or February, to be adjourned *sine die* in March, to assemble again at Simla in September, and to be once more adjourned indefinitely in October or November. Adjournments of the Council during a Session are made under Rule 6 of the Rules for the Conduct of Legislative Business, *post*. It has, before the transfer of the capital, assembled on two occasions elsewhere than at Calcutta or Simla once at Allahabad in April, 1871, and once at Agra in November, 1873, when there were three meetings. For form of convening notification, see App. XII, No. 7, *post*.

The question of legislation at the summer capital has formed the subject of correspondence with the Secretary of State—see App. VII *post*. The result of the orders passed before 1917 seems to be that only five classes of legislative business ought, *except in cases of great urgency*, to be taken up in Simla, see App. VII, *post*.

The principle of confining Council business in the Simla Session to unimportant and non-controversial matters has also been applied to the moving of Resolutions on matters of General Public Interest with the result that during 1912 to 1916 only two Resolutions have been admitted and discussed during the Simla Session. In view of the great increase in the volume of business and the grievance felt by non-official members that the existing practice deprives them during the Simla Session of the statutory right to discuss matters of importance, the Government of India decided provisionally to admit Resolutions during the 1917 Simla Session and in their Despatch No. 5, dated 8th June, 1917, to the Secretary of State, requested that they may be authorised to take up in Simla legislative measures in addition to those referred to above. The Secretary of State agreed to these proposals as an experimental measure—see App. VII, *post*.

The following are examples of legislation actually effected at Simla :—

Cantonments Act, 1889.	Oudh Courts Act (1891) Amendment Act, 1897.
Indian official Secrets Act, 1889.	
Punjab Municipal Act, 1891.	Central Provinces Land-revenue Act, 1898.
Indian Articles of War Amendment Act, 1894.	Central Provinces Tenancy Act, 1898.
Marriages Validation (Bangalore) Act, 1895.	Burma Laws Act, 1898.
Pilgrim Ships Act, 1895.	Live-stock Importation Act, 1898.
Central Provinces Additional Commissioners Act, 1896.	Central Provinces Court of Wards Act, 1899.
Sindh Incumbered Estates Act, 1896.	Currency Conversion (Army) Act, 1899.

Presidency Banks Act, 1899.	Central Provinces Financial Commissioner's Act, 1908.
Church of Scotland Kirk Sessions Act, 1899.	Indian Volunteers (Amendment) Act, 1909.
Bankers' Books Evidence Act, 1900.	Anand Marriage Act, 1909.
Punjab Alienation of Land Act, 1900.	Cantonments Act, 1910.
Indian Paper Currency Act, 1900.	Indian Census Act, 1910.
Repealing and Amending Act, 1901.	Continuing Act, 1910.
Central Provinces Village-sanitation Act, 1902.	Indian Christian Marriage Act, 1911.
Indian Emigration (Amendment) Act, 1902.	Court-fees (Amendment) Act, 1911.
Indian Extradition Act, 1903.	Indian Airships Act, 1911.
Indian Emigration (Amendment) Act, 1904.	Cowasjee Jehangir Baronetcy Act, 1911.
Indian Articles of War (Amendment) Act, 1904.	Wild Birds and Animals Protection Act, 1912.
Indian Stamp (Amendment) Act, 1904.	Presidency Small Cause Courts (Amendment) Act, 1912.
Indian Articles of War (Amendment) Act, 1905.	Indian Divorce (Amendment) Act, 1912.
Court-fees (Amendment) Act, 1905.	Delhi Laws Act, 1912.
Bengal and Assam Laws Act 1905.	Sea Customs (Amendment) Act, 1914.
Excise (Amendment) Act, 1906.	Indian Army (Amendment) Act, 1914.
Land Improvement and Agriculturists' Loans (Amendment) Act, 1906.	Second Repealing and Amending Act, 1914.
Local Authorities Loan (Amendment) Act, 1907.	Repealing and Amending Act, 1915.
Prevention of Seditious Meetings Act, 1907.	Indian Soldiers (Litigation) Act, 1915.
Explosive Substances Act, 1908.	Enemy Trading Act, 1915.
Newspapers (Incitements to Offences) Act, 1908.	Benares Hindu University Act, 1915.
Indian Limitation Act, 1908.	Enemy Trading Act, 1916.
Indian Salt Duties Act, 1908.	Import and Export of Goods Act, 1916.
	The Patna University Act, 1917.
	The Post Office Cash Certificates Act, 1917.



The Indian Transfer of Ships Restriction Act, 1917.	The Indian Companies (Foreign Interests) Act, 1918.
The Transfer of Property (Validating) Act, 1917.	The Cotton Cloth Act, 1918.
The Gold Coinage Act, 1918.	Indian Bills of Exchange Act, 1916.
The Provisional Collection of Taxes Act, 1918.	Hindu Disposition of Property Act, 1916.

Legislative powers.

65. (1) The Governor-General in Legislative Council [Indian Councils Act, 1861, s. 22 ;

- has power to make laws —
- (a) for all persons, for all Courts, and for all places and things, within British India ; and Govt. of India Act, 1865, ss. 1, 2 ; Indian Councils Act, 1869, s. 1 ;
  - (b) for all subjects of His Majesty and servants of the Crown within other parts of India ; and Indian Councils Act, 1892, s. 3.]
  - (c) for all native Indian subjects of His Majesty, without and beyond as well as within British India ; and
  - (d) for the government of officers, soldiers and followers in His Majesty's Indian forces, wherever they are serving, in so far as they are not subject to the Army Act ; and [East India Company Act, 1813, s. 96 ; Govt. of India Act, 1833, s. 73.]
  - (e) for all persons employed or serving in or belonging to the Royal Indian Marine Service ; and [Indian Marine Service Act, 1884, s. 2.]
  - (f) for repealing or altering any laws which for the time being are in force in any part of British India or apply to persons for whom the Governor-General in Legislative Council has power to make laws.

44 & 45 Vict., c. 58.

(2) Provided that the Governor-General in Legislative Council has not, unless expressly so authorised by Act of Parliament, power to make any law repealing or affecting— [Indian Councils Act, 1861, s. 22, provisos.]

- (i) any Act of Parliament passed after the year one thousand eight hundred and sixty and extending to British India (including the Army Act and any Act amending the same), or 44 & 45 Vict., c. 58.
- (ii) any Act of Parliament enabling the Secretary of State in Council to raise money in the United Kingdom for the government of India ;

and has not power to make any law affecting the authority of Parliament, or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom, or affecting the sovereignty or dominion of the Crown over any part of British India.

[Govt. of  
India Act,  
1883, s. 46 ;  
Indian Ma-  
rine Service  
Act, 1874,  
s. 5.]

(3) The Governor-General in Legislative Council has not power, without the previous approval of the Secretary of State in Council, to make any law empowering any Court, other than a High Court, to sentence to the punishment of death any of His Majesty's subjects born in Europe, or the children of such subjects, or abolishing any High Court.

See notes to s. 63, *Ilbert's Digest*.

For the constitutional position of the Indian Legislature *vis-a-vis* the Secretary of State, see *Stephen's Minutes*, No. 5 (1870), and *Hobhouse's Minutes*, No. 51 (1874).

The Indian Legislature is a subordinate legislature—see s. 131(2), *post*.

"The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it, and it can, of course, do nothing beyond the limits which circumscribe these powers. But when acting within these limits, it is not in any sense an agent or delegate of the Imperial Parliament, but has, and was intended to have, plenary powers of legislation, as large, and of the same nature, as those of Parliament itself." See judgment of Lord Selbourne in *Empress v. Burah* (1878), 1. L. R. 4 Cal. 172.

As to the validity of Indian Laws which affect the prerogative of the Crown, see s. 84 (a), *post*.

As to removal of doubts regarding validity of Indian laws and the saving of the power of Parliament to repeal or alter such laws, see ss. 84 and 131 (2), *post*.

As to the words "all Courts" in sub-section 1 (a), see App. XI, *post*; see also sub-section (3); "British India" is defined in s. 18 (4) of the Interpretation Act, 1889 (52 & 53 Vict., c. 63) and "India" is defined in s. 18 (5) of the same Act—*cf.* the similar definitions of these expressions in s. 3, (7) and (27) of the Indian General Clauses Act, 1897 (X of 1897).

As to whether the Indian Legislature has power to constitute Courts within the jurisdiction of a High Court but withdrawn from its super-vision and appellate jurisdiction—see Leg. Dept. U. O. 199 of 1913.

The Indian Legislature has power to legislate for Indian territorial waters: Leg. Dept. U. O. Nos. 297 of 1911, 31 of 1893, 126 of 1894; see also Acts XVI of 1879, XVI of 1881, XVI of 1914, and note 5 to s. 3(7) in *Chalmer's General Clauses Act 1897*. See also s. 66(1) *post*.

As to the power of the Indian Legislature to pass any enactment which would prevent a subject from suing the Secretary of State in a Civil Court, see s. 32 (2), *ante*, and notes thereunder.

Sub-section 1 (a) must be read subject to Part IX (ss. 101 to 114), *post*. The Governor-General in Legislative Council has power to remove territory from the jurisdiction of a Chartered High Court—see Legislative Department unofficial Nos. 22 and 140 of 1914.

No Indian enactment can compel a reference to a tribunal in England or confer jurisdiction on such tribunal to hear such a reference—see Legislative Department unofficial No. 606 of 1914.

As to who are "natural-born British subjects" see s. 1 of the British Nationality and Status of Aliens Act, 1914 (4 and 5 Geo. 5, c. 17). The subjects of a Native State are not British subjects though they are "protected persons"—*i.e.*, inasmuch as the Indian Ruling Chiefs owe allegiance to the British Crown, their subjects are treated as British

subjects when in any foreign State—*cf.* s. 15 of the Foreign Jurisdiction Act, 1890, (53 & 54 Vict., c. 37) and the preamble to the Slave Trade Act, 1876 (39 & 40 Vict., c. 46.) See also notes to s. 134, *post*.

There is a conflict of opinion on the question whether the Indian Legislature can authorize a Court sitting in British India to pass judgment in cases between foreign (Native State) subjects arising in foreign (Native State) territory by virtue of any foreign jurisdiction which it may possess.—Leg. Dep. U. O. Nos. 286 of 1908 and 116 and 555 of 1909.

An inter-departmental Committee, consisting of Sir W. Lee Warner and Messrs. H. Bertram Cox, C.J., B. Hurst and S. G. Sale, to whom certain questions on the exercise of foreign jurisdiction by Courts in British India were referred by the Secretary of State for India have held that the Indian Legislature can make laws for protecting the dignity or authority of such a Court and giving effect to its orders; they, however, point out that it would be in every way convenient and desirable that, in regulating foreign jurisdiction, the Government of India should act in conformity with the law and procedure laid down in the Foreign Jurisdiction Act, 1890.—Secretary of State's Despatch, Political No. 105, dated 14th October, 1910, and enclosures. There is, however, a distinction between power to give judgment, original and appellate, and the power to execute such judgment, and the Indian legislature has frequently empowered courts or other authorities in British India to execute judgments and sentences passed by foreign (Native State) Courts—Leg. Dep. U. O. Nos. 286 of 1908, 116 and 555 of 1909.

Sub-section (1) (c) empowers the Governor-General in Council to make personal laws for all native Indian subjects of Her Majesty all over the world—see Leg. Dep. U. O. No. 358, July, 1874; No. 1567, May, 1878. See also *R. v. Elmstone* (1870), 7 Bom. H. C. R. Crown cases, p. 109. As to jurisdiction over extra territorial offences, see s. 4, Indian Penal Code.

Sub-section (1) (d) should be read with s. 180 of the Army Act (44 and 45 Vict., c. 58). Europeans in the Indian Army come under the Army Act and Natives of India come under the Indian Army Act, 1911, (VIII of 1911). As to Volunteers see s. 177 of the Army Act and the Indian Volunteers Act, 1869 (XX of 1869). See also in this connection the provisions of the Indian Defence Force Act, 1917 (III of 1917).

Sub-section (1) (e) is supplemented by s. 66, *post*; see also the Indian Marine Act, 1887 (XIV of 1887). For a short history of the Indian Marine Service, see *Ilbert*, p. 233.

Sub-sections (2) and (3), in so far as they restrict the powers of the Governor-General in Legislative Council, are supplemented by ss. 63(7), *ante*, and 67, 74(5), 76(4), 80(3), *post*.

"*Repealing or affecting*"—as to meaning of "*affecting*" here see the note of the Law Member (Sir G. Lowndes) in B. Pros., Octr. 1917, Nos. 52-53, where he held that it means "*affecting injuriously*" in the sense of "*interfering with or impinging upon*" and that any narrower construction must involve a much greater restriction on the powers of the Indian Legislature. See also the notes on legislation in App. XI, *post*; and *Hari v. Secretary of State* (1903), I. L. R. 27 Bom. 424. See in this connection s. 131 (3) and Sch. V, *post*.

The words "*the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland whereon may depend in any degree the allegiance of any persons to the Crown of the United Kingdom*" refer apparently to the provisions of the Great Charter and the Petition of Rights, which set forth and asserted the rights of the subject accord-

ing to what was supposed to be the ancient unwritten law and constitution of the realm, and on the due observance of which by the Sovereign may be said to depend the allegiance of his subjects. *See in the matter of Ameer Khan* (1877), 6 B. L. R., at pp. 450-459. The meaning of the words was also discussed in *Annie Besant v. Govt. of Madras and Emperor*, Madras Weekly Notes, 1916, pp. 461, 486. See also *in re Jewa Nathoo and others*, I. L. R. 44 Cal., p. 459, and Leg. Dep. U. O. 199 of 1913.

The effect of the words "or affecting the sovereignty or dominion etc." is to bar legislation to authorize or confirm the cession of territory—see note (m) to s. 63, *Ilbert's Digest*.

It should be noted that under sub-section (3), an Act giving power to any Court, other than a High Court, to sentence European British subjects to death requires the previous sanction of the Secretary of State in Council. This restriction on the legislative power of the Governor-General in Council does not apply to his powers under the Indian Foreign Jurisdiction Order in Council, 1902: Leg. Dep. U. O. No. 173 of 1916.

As to the meaning of "High Court" as used in this Act, see s. 101 (1), *post*.

While the Governor-General's Legislative Council has plenary power—see *Empress v. Burah* (1878), L. R. 5, I. A. 178 and I. L. R. 4 Cal. 172—to legislate for all persons, courts, places and things whatsoever within British India, it has also extra-territorial power in that it may make laws for native Indian subjects of the King anywhere, for European British subjects and servants of the Government of India in the feudatory states of India, and for native officers and soldiers of the Army and persons belonging to the Royal Indian Marine, wherever they may be serving.

For cases raising the question of an invalid assumption of extra-territorial powers, see Leg. Dep. U. O. No. 531 of 1887 (service of summonses in Native States), U. O. No. 816 of 1887 (marriages in Native States); amendment of Order V, rule 26 (b) of the Civil Procedure Code (Leg. Dep. M. S. No. 79 of 1912). See also *Thornton v. Thornton* (1886) I. L. R., 10 Bom. 422.

Various other Acts of Parliament have conferred legislative powers on the Indian Legislature. The following statutes may be mentioned in addition to those mentioned on p. 230, *Ilbert*, as conferring power to make laws on particular subjects:—the Copyright Act, 1911 (1 and 2 Geo. 5, c. 46), pursuant to which the Indian Copyright Act, 1914 (III of 1914), has been passed; the Official Secrets Act, 1911 (1 and 2 Geo. 5, c. 23), s. 11; the British Nationality and Status of Aliens Act, 1914 (4 and 5 Geo. 5, c. 17), s. 26.

The maxim that the Crown is not bound by any enactment unless expressly named therein applies also to Indian enactments. See *Erle Richards'* Minutes, No. 95 (1907), and Leg. Dep. U. O. 421 of 1917.

[Indian Marine Service Act, 1884, s. 2, provisions (a), (b), 3.]

66. (1) A law made under this Act for the Royal Indian Marine Service shall not apply to any offence unless the vessel to which the offender belongs is at the time of the commission of the offence within the limits of Indian waters, that is to say, the high seas between the Cape of Good Hope on the West and the Straits of Magellan on the East, and any territorial waters between those limits.

Laws for the Royal Indian Marine Service.

(2) The punishments imposed by any such law for offences shall be similar in character to, and not in excess of, the punishments which may, at the time of making the law, be imposed for similar offences under the Acts relating to His Majesty's Navy, except that in the case of persons other than Europeans or Americans, imprisonment for any term not exceeding fourteen years, or transportation for life or any less term, may be substituted for penal servitude.

This section supplements s. 65 (1) (e), *ante*, and is supplemented by s. 6 of the Indian Marine Service Act, 1884 (47 and 48 Vict., c. 38). The *Secretary of State* has been advised that a proclamation issued under s. 6 may declare that all vessels (and not merely any particular vessel) of Her Majesty's Indian Marine Service, which the Governor-General in Council may from time to time place under command of the Senior Naval Officer, shall be under his command for the purposes of the section—Despatch from the Secretary of State, dated 3rd June, 1886; Leg. Dep. U. O. Nos. 660 and 746 of 1885.

Vessels armed and manned by Naval Volunteers are not Vessels of the Royal Indian Marine Service.—Legislative Department unofficial No. 97 of 1890. Royal Indian Marine Ships are Crown ships and immune from proceedings *in rem* (Opinion of the *Advocate General*): Leg. Dep. U. O. No. 708 of 1911.

"Indian waters" as defined in sub-section (1) should be distinguished from Indian "territorial waters" *i.e.*, waters within a marine league of the coast—See the Territorial Waters Jurisdiction Act, 1878 (41 and 42 Vict., c. 73), s. 7.

Business at meetings.

67. (1) At a meeting of the Indian Legislative Council [Indian Councils Act, 1861, s. 19.] no motion shall be entertained other than a motion for leave to introduce a measure into the Council for the purpose of enactment, or having reference to a measure introduced or proposed to be introduced into the Council for that purpose, or having reference to some rule for the conduct of business in the Council, and no business shall be transacted other than the consideration of those motions or the alteration of those rules.

(2) It shall not be lawful, without the previous sanction of the Governor-General, to introduce at any meeting of the Council any measure affecting—

- (a) the public debt or public revenues of India, or imposing any charge on the revenues of India; or
- (b) the religion or religious rites and usages of any class of British subjects in India; or
- (c) the discipline or maintenance of any part of His Majesty's military or naval forces; or
- (d) the relations of the Government with foreign Princes or States.

(3) Notwithstanding anything in the foregoing provisions of this section, the Governor-General in Council may, with the sanction of the Secretary of State in Council, make rules authorising at any meeting of the Indian Legislative Council the discussion of the annual financial statement of the Governor-General in Council and of any matter of general public interest and the asking of questions, under such conditions and restrictions as may be prescribed in the rule. Rules made under this sub-section may provide for the appointment of a member of the Council to preside at any such discussion [or when questions are asked] in the place of the Governor-General and of the Vice-President and shall be laid before both Houses of Parliament as soon as may be after they are made, and shall not be subject to repeal or alteration by the Governor-General in Legislative Council.

[Indian Councils Act, 1909, ss. 5, 7.]

*See notes to s. 64, Ilbert's Digest.*

As to the distribution of business between the Sessions held at Simla and Delhi (and, before the change of capital, at Simla and Calcutta), see the notes under s. 64, *ante*.

As to transmission to the Secretary of State of copies of Bills before publication or introduction, see rr. 25 (2), 26 of the *Rules of Business*, *post*.

"It is not constitutional for the (Legislative) Council to force the Executive Government to any particular course." See speech of Sir H. S. Maine in Council on the 31st March, 1866, in connection with the Native Converts' Marriage Dissolution Bill. See also para. 24 of the despatch from the Secretary of State (Sir C. Wood afterwards Lord Halifax), dated the 9th August, 1861.—App. II, *post*, in which it is frankly stated that "one object of this section is to prevent the legislature from interfering with the functions of the Executive Government and occupying its time with matters which are not directly or immediately connected with the special duties assigned to it."

It was held by the Secretary of State, after the passing of the Indian Councils Act, 1892, that a meeting of the Legislative Council could be summoned only for the purpose of making laws and regulations, and that it could not legally be summoned for the purpose of merely discussing the financial statement or of giving replies to questions at a time when there is no (strictly) legislative business before it. Despatch No. 24 Public, dated 16th February, 1893, from Secretary of State to Government of India, paragraph 7—quoted in Legislative Department B. Procs. April, 1912, Nos. 330—332. The Advocate-General of Madras inclined to the opinion that this ruling by the Secretary of State would hold good in the case of the Legislative Councils constituted under the Indian Councils Act, 1909.—Legislative Department B. Procs. April, 1912, Nos. 330—332.

"Rule for the conduct of business in the Council": these words in sub-section (1) must, in view of the provisions of sub-section (3), be taken to refer only to rules for the conduct of legislative business proper referred to in s. 70, *post*.

"Revenues of India"—See s. 20 (3), *ante*.

Any Bill imposing taxation "affects the public revenue" within the meaning of sections 19 and 38 of the Indian Councils Act, 1861;

"affecting" is not restricted in its meaning to "affecting prejudicially": Leg. Dept. U. O. No. 547 of 1912.

The words "*or when questions are asked*" in sub-section (3) were inserted by the Govt. of India (Amendment) Act, 1916, Sch. I—*cf.* s. 64 (3).

For the existing sets of rules made under s. 5 of the Indian Councils Act, 1909, *see post*. These rules are saved by s. 130, *post*, and are by virtue of s. 134 (7), *post*, deemed to be rules made under this Act.

These rules cannot be changed by executive order; it is, however, provided in all these rules that they may be suspended by the President who may thus alter the date fixed by the rules for the presentation of the revised Financial Statement.—Legislative Department unofficial 78 of 1911.

The rule-making power under sub-section (3) only covers rules for the conduct of business at meetings of the Legislative Council when the particular classes of business mentioned in the sub-section are being transacted, and does not cover rules for the conduct of legislative business proper which can be made under s. 70. *post* :

A rule made under sub-section (3) cannot authorise the appointment of a Member to preside at meetings of the Council when legislative business proper is being transacted; such a rule can only authorise the appointment of a member to preside at the discussions mentioned in the sub-section in the place of the Governor-General, and of any Vice-President—Leg. Dep. U. O. No. 644 of 1909.]

Assent of  
Governor-  
General to  
Acts.

68. (1) When an Act has been passed at a meeting [Indian of the Indian Legislative Council, the Governor-General, Councils Act, whether he was or was not present in Council at the passing thereof, may declare that he assents to the Act, or that he withholds assent from the Act or that he reserves the Act for the signification of His Majesty's pleasure thereon. 1861, s. 20.]

(2) An Act of the Governor-General in Legislative Council has not validity until the Governor-General has declared his assent thereto, or, in the case of an Act reserved for the signification of His Majesty's pleasure, until His Majesty has signified his assent to the Governor-General through the Secretary of State in Council, and that assent has been notified by the Governor-General.

"Indian Legislative Council"—*See* s. 63 (1), *ante*.

These powers are conferred on the Governor-General in person. There is no limit of time within which assent must be given, and it has been delayed pending a reference to the Secretary of State—*see* Legislative Department's U. O. No. 275 of 1898.

As soon as a Law has been assented to, it is published as an "Act" all Acts being numbered consecutively in a separate series for each calendar year.

For power of Governor-General to assent to or withhold his assent from Acts of Local Legislature, *see* s. 81, *post*.

The language of this section and s. 81 shows clearly that this power of assent must be exercised with reference to the Act as a whole; there is no power to assent to one part and disallow another part: Deposit Proceedings, November, 1916, No. 12.

The power of reserving an Act for the signification of Her Majesty's pleasure thereon has apparently never been used.

For form of recording assent, *see* App. XII, No. 12, *post*.

As to Regulations, *see* s. 71, *post*.

[East India  
Company  
Act, 1772,  
s. 37; Indian  
Councils Act,  
1861, s. 21.]

69. (1) When an Act of the Governor-General in Legislative Council has been assented to by the Governor-General he shall send to the Secretary of State an authentic copy thereof, and it shall be lawful for His Majesty to signify, through the Secretary of State in Council, his disallowance of any such Act.

Powers of  
Crown to  
disallow  
Acts.

(2) Where the disallowance of any such Act has been so signified, the Governor-General shall forthwith notify the disallowance, and thereupon the Act, as from the date of the notification, shall become void accordingly.

This power of disallowance has apparently never been used: but in 1875 the Secretary of State expressed himself as unable to sanction s. 2 of the Indian Law Reports Act, 1875 (II of 1875), which in effect sought to make judgments of every High Court binding on all subordinate Courts even outside its appellate jurisdiction. He at the same time suggested the passing of an Act to repeal s. 2. As a result, Act II of 1875 was repealed and re-enacted as the Indian Law Reports Act, 1875 (XVIII of 1875), the provisions objected to by the Secretary of State being omitted—*see* Legislative Department Proceedings, November, 1875, Nos. 1--10. Again in 1877, the Secretary of State intimated that he would find it difficult to consent to the enactment of the Code of Civil Procedure, as it repealed the Lord's Day Act (29 Car. 2, c. 7), and suggested the passing of a short Act with reference thereto—*see* Legislative Department's Pros., July, 1877, Nos. 50 and 51, and March, 1879, Nos. 1--7. The suggestion was not acted upon—*see* Leg. Dep. U. O. No. 683 of 1883.

When an Act has been passed by the Governor General in Council, the Secretary of State usually sends a despatch intimating that it has been considered by him in Council and will be left to its operation. But such a formal expression of approval is clearly not essential to its validity, and it need not be awaited before an Act is allowed to operate. No official action is taken on such despatches; but by a special arrangement with the Military Department, any Acts relating to military matters are sent to it unofficially for information by the Legislative Department.

For the constitutional position of the Indian Legislature *vis-a-vis* the Secretary of State and a discussion setting out the objections to certain proposals of the Secretary of State which would have the effect of restricting the legislative discretion of the Legislative Council and depriving it of all real power in the discussion of Bills—*see* *Stephen's Minutes*, No. 5, (1870) and *Hobhouse's Minutes*, No. 51 (1874).

[Indian  
Councils Act,  
1861, s. 18.]

70. The Governor-General in Legislative Council may, subject to the assent of the Governor-General, alter the rules for the conduct of legislative business in the Indian Legislative Council (including rules prescribing the mode of promulgation and authentication of Acts passed by that Council); but any alteration so made may be disallowed by the Secretary of State in Council, and if so disallowed shall have no effect.

Rules for  
conduct of  
legislative  
business.



For the existing rules which were made under s. 18 of the Indian Councils Act, 1861, see the *Rules for the Conduct of Legislative Business*, *post*. See in this connection para. 16 of Sir C. Wood's Despatch of 9th August, 1861, in Appendix II, *post*.

The power to make rules under this section covers only rules relating to the conduct of *legislative* business, and is quite distinct from the rule-making power under s. 67 (3) *ante*—see note under that section and *c.f.* s. 67 (1). For similar power conferred in the case of local Legislative Councils, see s. 83, *post*.

### *Regulations and Ordinances.*

[Govt. of  
India Act,  
1870, ss.  
1, 2.]

71. (1) The Local Government of any part of British India to which this section for the time being applies may propose to the Governor-General in Council the draft of any Regulation for the peace and good government of that part, with the reasons for proposing the Regulation.

(2) Thereupon the Governor-General in Council may take any such draft and reasons into consideration; and when any such draft has been approved by the Governor-General in Council and assented to by the Governor-General, it shall be published in the Gazette of India and in the local official Gazette, if any, and shall thereupon have the like force of law and be subject to the like disallowance as if it were an Act of the Governor-General in Legislative Council.

(3) The Governor-General shall send to the Secretary of State in Council an authentic copy of every Regulation to which he has assented under this section.

[(3a) A Regulation made under this section for any territory shall not be invalid by reason only that it confer or delegates power to confer on Courts or administrative authorities power to sit or act outside the territory in respect of which they have jurisdiction or functions, or that it confers or delegates power to confer appellate jurisdiction or functions on Courts or administrative authorities sitting or acting outside the territory.]

(4) The Secretary of State may, by resolution in Council, apply this section to any part of British India, as from a date to be fixed in the resolution, and withdraw the application of this section from any part to which it has been applied.

See notes to s. 68, *Ilbert's Digest*. See also *Chalmer's General Clauses Act*, 1897, pp. 58 to 60.

This section and the next deal with legislation by executive authorities.

"Governor-General in Council"—see definition in s. 134 (1) *post*.

"Local Government"—see definition in s. 134 (4), *post*.

"Peace and good government." These words confer a plenary power of legislation; they are the formula ordinarily used in constitut-

[Govt. of  
India Act,  
1870, s. 1.]

ing the legislature of a self-governing colony : see Keith, *Responsible Government in the Dominions*, Vol. 1, p. 358 (note). For cases, see *Hari v. Secretary of State* (1903), I. L. R. 27 Bom. at page 443 ; *Sekgome's case King v. Earl of Crewe* (1910), L. R. 2 K.-B. 576 (Legislative Department Edition of Foreign Jurisdiction Act at pages 89, 93, 102 and 108) ; *Canadian Prisoner's case* (1839), L. J. N. S. 8, page 129 ; *Powell v. Apollo Candle Co.* (1885) L. R. 10 A. C., page 288 ; *Riel's case* (1885), L. R. 10 A. C., page 678.

The Government of India Act, 1870 (33 Vict. c. 3), which was the outcome of a despatch from the Government of India to the Secretary of State, dated the 12th January, 1869,<sup>1</sup> was intended to provide a more summary legislative procedure, but not in any way to increase or diminish the legislative powers of the Governor-General in Council. The expression "like force of law" in sub-section (2) means precisely the same legal operation or effect as the operation or effect of an Act of the Governor-General in Council passed at a meeting for the purpose of making laws and regulations—see Legislative Department's U. O. No. 1081 of 1877.

As to the expression "Regulation," see s. 3(46) of the General Clauses Act, 1897 (X of 1897), which defines it as meaning a "Regulation made under the Government of India Act, 1870."

*Sir A. Miller* (Law Member) thought that an Act should not be amended by a Regulation—see Leg. Dep. U. O. No. 953 of 1895. An earlier Law Member, *Sir A. Scoble*, on the other hand objected to a Regulation being amended by an Act—see the notes in Legislative Department's U. O. April, 1891, Nos. 393–446. In practice, however, Acts are frequently amended by Regulations, and *vice versa*—see Leg. Dep. U. O. No. 50 of 1901.

*Sub-section (3a)*: There has been considerable divergence of opinion on the question whether the application of a Regulation is, or is not, strictly *territorial*—see Legislative Department's U. O. Nos. 255 of 1898 and 236 of 1899. The view which appears on the whole to have prevailed, is that there is no such territorial restriction, and that the only limitation is that the Regulation must be conceived in the interests of "the peace and government" of a tract to which the Statute of 1870 has been made applicable. This is in accord with actual practice, reaching back to some of the earliest, and extending to some of the latest, Regulations made under the Statute. Thus for instances s. 15 of the Andaman and Nicobar Islands Regulation, 1874 (IV of 1874),<sup>2</sup> enacted that "the Governor-General in Council may from time to time empower any Court or authority within British India and beyond the limits of the settlement to confirm and modify or reverse any order or sentence passed in any criminal trial by any officer within such Settlement;" by s. 76 of the Arakan Hills Civil Justice Regulation, 1874 (VIII of 1874), the Judicial Commissioner (sitting in Rangoon) was empowered to call up appeals; and by s. 7 of the British Baluchistan Civil Justice Regulation, 1896 (IX of 1896), the Chief Court of the Punjab is declared to be the High Court in divorce proceedings for British Baluchistan. Such provisions have been acted upon; and the view that they are within the scope of the law-making power of the statute of 1870 has not so far, except by the Chief Court of the Punjab in a recent case, been judicially condemned. But the Advocate General of Bengal (the late *Sir C. Paul*) once advised to the

<sup>1</sup> For the despatch see Maine's Minutes, Nos. 67 and 69 at pp. 158 and 161.

<sup>2</sup> Reg. IV of 1874 has been repealed and re-enacted by Reg. III of 1876.

contrary—see his opinion, dated the 16th September, 1898, in Home Department, J. L. P. No. 101, and recently a Full Bench of the Punjab Council held that the Court had no jurisdiction to hear an appeal transferred to it, under a Regulation not applicable to the Punjab—See Leg. Dep. U. O. Nos. 437 of 1906 and 50 of 1907. In order to set this question at rest sub-section (3a) has been inserted by the Government of India (Amendment) Act, 1916, s. 2, which also validates laws made as well before as after the commencement of that Act. See Leg. Dep. U. O. 33 of 1916.

Merely formal amendments may be made by the Government of India, without reference to the Local Government concerned, in the draft of a Regulation proposed under this section; but, where material amendments affecting the substance are deemed necessary, the draft Regulation should be sent back to be proposed afresh after revision. For a draft altered as to form and forthwith passed, see Leg. Dep. U. O. No. 124 of 1873; for a draft sent back for revision and re-submission, see Leg. Dep. U. O. No. 169 of 1873; Leg. Dep. Progs. May, 1916, Nos. 31—36.

*Sub-section (4)*: For the places to which section 1 of the Government of India Act, 1870, has been declared applicable, see Appendix B to the Scheduled Districts Act, 1874 (XIV of 1874), published among the General Acts, Vol. II. Such places become "Scheduled Districts"—see s. 1 of the Scheduled Districts Act, 1874 (XIV of 1874), and s. 3 (49) of the General Clauses Act, 1897 (X of 1897).

It has always been thought that a draft of a Regulation proposed under the Statute of 1870 should be considered at a *meeting* of the Executive Council, and r. 25 of the *Rules of Business, post*, accordingly makes express provision for this. See the rule and the notes thereunder.

It should be borne in mind that Regulations must be published in the *Gazette of India* and the local official Gazette, and that they do not come into force until they have been published in both. But there are—see the first note to r. 35 of the *Secretariat Instructions, post*—no separate local Gazettes for Ajmer-Merwara and British Baluchistan, and Regulations relating to those Provinces are, perforce, published only in the *Gazette of India*. All the Regulations are, like Acts, numbered consecutively in a separate series for each calendar year.

For form of notification publishing a Regulation, see App. XII, No. 17, *post*.

Power to  
make Ordin-  
ances in case  
of emer-  
gency.

72. The Governor-General may, in cases of emergency, [Indian government of British India or any part thereof, and any Ordinance so made shall, for the space of not more than six months from its promulgation, have the like force of laws as an Act passed by the Governor-General in Legislative Council; but the power of making Ordinances under this section is subject to the like restrictions as the power of the Governor-General in Legislative Council to make laws; and any Ordinance made under this section is subject to the like disallowance as an Act passed by the Governor-General in Legislative Council, and may be controlled or superseded by any such Act.] 1861, s. 23.]

It should be noted that the power to make and promulgate Ordinances is conferred not on the Governor-General in Council but on the Governor-General personally.

*"Peace and good government"*—see note to s. 71, *ante*.

The power to make and promulgate Ordinances "*for the peace and good government of British India or any part thereof*" does not empower the making of an Ordinance to have operation outside British India : Leg. Dep. U. O. 289 of 1916.

As to *promulgation*, see Leg. Dept. U. O. 890 of 1896.

This extraordinary power is not unlike that which was, for but a short time during the reigns of Henry VIII and Edward VI, placed in the hands of the Sovereign in Council in England by the Statute of Proclamations (31 Hen. 8, c. 8)—see Dicey's *Law of the Constitution*, at p. 47. It was resorted to on only seven occasions before the present war ; once with the object of restraining certain dramatic performances of a character calculated to excite racial animosity ; once in order to deal with the disturbed state of the Agror Valley in the Punjab ; once in order to deal with seditious meetings ; thrice in connection with matters of purely fiscal importance ; and once in order to prohibit cotton gambling in Bengal. Since the outbreak of the war the power has been exercised frequently in connection with measures necessitated by the war and once in connection with inquiries into Legislative Council election disputes. "It is to be called into action only on urgent occasions, the reasons for a resort to it should always be recorded, and these, together with the Ordinance itself, should be submitted, without loss of time, for the consideration of Her Majesty's Government."—See para. 26 of the despatch from the Secretary of State (Sir C. Wood, afterwards Lord Hallifax), dated the 9th August, 1861—App. II, *post*.

For an example of a notification making and promulgating an Ordinance, see App. XII, No. 14, *post*.

### *Local Legislatures.*

[Indian Councils Act, 1861, ss. 29, 45, 48; Indian Councils Act, 1892, s. 6; Indian Councils Act, 1909, ss. 1 (1), 3 (4); Govt. of India Act, 1912, ss. 1, 3.]

73. (1) For purposes of legislation, the Council of a Local legislature, Governor, or of a Lieutenant-Governor having an Executive Council, shall consist of the members of his Executive Council with the addition of members nominated or elected in accordance with rules made under this Act.

(2) In the case of the Councils of the Governors of Madras and Bombay (and, if so ordered by the Governor of Bengal, in the case of his Council), the Advocate General or acting Advocate General for the time being of the presidency shall be one of the members so nominated.

(3) The Legislative Council of a Lieutenant-Governor not having an Executive Council, or of a Chief Commissioner shall consist of members nominated or elected in accordance with rules made under this Act.

(4) Councils constituted as provided by this section are in this Act referred to as Local Legislative Councils, and Governors, Lieutenant-Governors and Chief Commissioners in Legislative Council are in this Act referred to as Local Legislatures.

As to the words "*rules made under this Act*" in sub-sections (1) and (2) see sections 74, 76, 134 (7), *post*.

Under the *Provisional Rules* for the Local Legislative Councils (with the exception of those for the three Presidencies) the *nomination* of members requires the sanction of the Governor-General personally.

As to power to create Executive Councils for Lieutenant-Governors, see section 55, *ante*.

As to the power of the Secretary of State to suspend or revoke the appointment of a Governor's Executive Council, see s. 46 (3), *ante*. This power has never been exercised.

Legislative Councils have been constituted for all the existing Governorships and Lieutenant-Governorships and for the Chief Commissionerships of Assam and the Central Provinces. As to power to constitute new Legislative Councils for future Lieutenant-Governorships and other Chief Commissionerships see section 77, *post*.

A Legislative Council could probably not be established for Agra if constituted a Presidency with a Governor in Council under section 52, *ante*, since that section definitely prescribes the terms and conditions under which such a Presidency may be constituted—see note to that section *ante*.

It should be noted that in the case of the Madras and Bombay Legislative Councils, the Advocate General must be a nominated member; in the case of Bengal the Advocate General need not be nominated.

Under the Imperial Council Regulations no person who is elected or nominated to that Council may retain his seat on a Local Council.

[Indian Councils Act, 1909, s. 1 (2); Govt. of India Act, 1912, s. 1 (1).] 74. (1) The number of Additional Members nominated or elected to the Legislative Council of the Governor of Bengal, Madras or Bombay, the number of such members required to constitute a quorum, the term of office of such members, and the manner of filling casual vacancies occurring by reason of absence from India, inability to attend to duty, death, acceptance of office, or resignation duly accepted or otherwise, shall, in the case of each such Council, be such as may be prescribed by rules made under this Act :—

Provided that the aggregate number of members so nominated or elected shall not exceed the number specified in that behalf in the second column of the First Schedule to this Act.

(2) At least one-half of the Additional Members nominated or elected to any of those Councils must be persons not in the civil or military service of the Crown in India; and if any such person accepts [any office of profit] under the Crown in India his seat as a member shall thereon become vacant. [Indian Councils Act, 1861, s. 29; Indian Councils Act, 1909, s. 1 (1); Govt. of India Act, 1912, s. 1 (1).]

(3) An Additional Member of any of those Councils is not entitled to be present at meetings of the Governor's Executive Council. [Indian Councils Act, 1909, s. 6.]

(4) The Governor-General in Council may, with the approval of the Secretary of State in Council, make rules as to the conditions under which and manner in which persons [Indian Councils Act, 1909, s. 6.]

resident in India may be nominated or elected Additional Members of any of those Legislative Councils, and as to the qualifications for being and for being nominated or elected, an Additional Member of any of those Councils, and as to any other matter for which rules are authorised to be made under this section, and also as to the manner in which those rules are to be carried into effect.

[(4a) Rules made under this section may provide for the final decision of doubts or disputes as to the validity of an election.]

[(4b) Subject to any rules made under this section, any person who is a ruler or subject of any State in India shall be eligible to be nominated a member of a Legislative Council.]

(5) All rules made under this section shall be laid before both Houses of Parliament as soon as may be after they are made, and those rules shall not be subject to repeal or alteration by the Governor-General in Legislative Council. [Indian Councils Act, 1909, s. 7.]

This section and the next relate only to the Legislative Councils of the three Presidencies of Bengal, Madras and Bombay.

"*Rules made under this Act.*"—See sub-section (4), and s. 134 (7), *post*.

As in section 63 (3), the words "any office of profit" have been substituted for the words "office" in sub-section (3) of this section by the same Statute. For definition of "office" see s. 134 *post*.

"*Persons not in the Civil or Military Service of the Crown.*"—See notes *re* the expression "non-official persons" under s. 63, *ante*.

Compare the sub-sections of this section with the corresponding sub-sections of section 63, *ante*, and see notes thereunder.

The existing Regulations under sub-section (4) are those which were made for Legislative Councils of the Presidencies under section 6 of the Indian Councils Act, 1909, by the Governor-General in Council. The Regulations provide for a non-official majority in the case of each of these Councils.

Sub-sections (4a) and (4b) which are similar to sub-sections (6a) and (6b), respectively, of section 63, have been inserted by the Government of India (Amendment) Act, 1916, s. 1, which also validates past rules and nominations.

There is no provision in the Regulations for the Local Legislative Councils to enable subjects of Native States or persons who are not British subjects to be *elected* to those Councils. Such persons may however be *elected* to the Governor-General's Legislative Council with the special sanction of the Governor-General in Council—see Reg. IV (a), proviso.

[Indian Councils Act, 1861, s. 36; Govt. of India Act, 1912, s. 1(1).] **75. (1)** The Legislative Council of the Governor of Bengal, Madras or Bombay shall assemble at such times and places as the Governor appoints. Meetings of Legislative Councils of Bengal Madras and Bombay.

(2) Any meeting of the Council may be adjourned by the Governor, or, under his authority, by the other person presiding.

(3) In the absence of the Governor from any meeting of the Council the person to preside thereat shall be the Vice-President of the Council, or, in his absence, the Senior Civil Member of the Executive Council present at the meeting, or, during the discussion of the annual financial statement, or of any matter of general public interest [or when questions are asked] the Vice-President or the member appointed to preside in accordance with rules made under this Act. [Indian Councils Act, 1861, s. 34; Indian Councils Act, 1909, ss. 4, 5; Govt. of India Act, 1912, s. 1(1).]

(4) If any difference of opinion arises on any question brought before a meeting of the Council, the person presiding shall have a second or casting vote. [Indian Councils Act, 1861, s. 34.]

*See notes to s. 72, Ilbert's Digest.*

*Compare this section with section 64, ante, and see notes thereunder.*

*"Vice-President of the Council."*—*See s. 48, ante.*

*"Senior Civil Member."*—*See s. 51, ante, and notes thereunder.*

As to the *"Financial statement, etc."* and *"rules made under this Act"* see further s. 80 (3), *post*.

The words "or when questions are asked" were inserted in sub-section (3) by the Government of India (Amendment) Act, 1916, Sch. I—*cf.* s. 80 (3), *post*.

Constitution of Legislative Council of Lieutenant-Governors and Chief Commissioners.

76. (1) The number of members nominated or elected to the Legislative Council of a Lieutenant-Governor or Chief Commissioner, the number of such members required to constitute a quorum, the term of office of such members, and the manner of filling casual vacancies occurring by reason of absence from India, inability to attend to duty, death, acceptance of office, or resignation duly accepted, or otherwise shall, in the case of each such Council, be such as may be prescribed by rules made under this Act: [Indian Councils Act, 1909, s. 1(2); Govt. of India Act, 1912, s. 3.]

Provided that the aggregate number of members so nominated or elected shall not, in the case of any Legislative Council mentioned in the first column of the First Schedule to this Act, exceed the number specified in that behalf in the second column of that Schedule.

(2) At least one-third of the persons so nominated or elected to the Legislative Council of a Lieutenant-Governor or Chief Commissioner must be persons not in the civil or military service of the Crown in India. [Indian Councils Act, 1861, s. 45; Indian Councils Act, 1909, s. 1 (1); Govt. of India Act, 1912, s. 3.]

(3) The Governor-General in Council may, with the approval of the Secretary of State in Council, make rules to the conditions under which and manner in which persons resident in India may be nominated or elected members of [Indian Councils Act, 1909, s. 6.]

any of those Legislative Councils, and as to the qualifications for being, and for being nominated or elected, a member of any of those Councils, and as to any other matter for which rules are authorised to be made under this section, and as to the manner in which those rules are to be carried into effect.

[(3a) Rules made under this section may provide for the final decision of doubts or disputes as to the validity of an election.]

[(3b) Subject to any rules made under this section, any person who is a ruler or subject of any State in India shall be eligible to be nominated a member of a Legislative Council.]

[Indian  
Councils Act,  
1909, s. 6.]

(4) All rules made under this section shall be laid before both Houses of Parliament as soon as may be after they are made, and those rules shall not be subject to repeal or alteration by the Governor-General in Legislative Council.

See notes to s. 73, *Ilbert's Digest*, and s. 73 (1), (3), (4), *ante* and notes thereunder.

This and the next two sections relate only to Legislative Councils of Lieutenant-Governors and Chief Commissioners.

Compare this section with sections 63 and 74, *ante*, and see the notes thereunder.

*Sub-section (2).*—It may be noted that though in sub-section (1) the words "*casual vacancies occurring by reason of . . . acceptance of office*" occur, sub-section (2) does not contain provisions corresponding to the provisions contained in the latter half of ss. 63 (3) and 74 (2), *ante*, under which the seat of a non-official Member shall become vacant on his accepting any office of profit under the Crown. This omission was deliberate and due to the decision of the India Office Advisory Committee that s. 48 of the Indian Councils Act, 1861, should be read as *not* extending to Legislative Councils of Lieutenant-Governors the provisions of s. 29 as to vacation of seats on acceptance of office. For a discussion as to the effect of the omission and the question whether a rule containing such provisions would be *intra vires* of sub-section (3) of this section, see Leg. Dep. u. o. Nos. 621 of 1916 and 206 of 1917.

The existing rules under sub-section (3) are the Regulations which were made under s. 6 of the Indian Councils Act, 1909, by the Governor-General in Council.

*Sub-sections (3a) and (3b)* correspond to sub-sections (6a) and (6b) in s. 63, *ante*, and (4a) and (4b) in s. 74, *ante*, and were inserted by the Government of India (Amendment) Act, 1916, s. 1 (2), which also validates past rules and nominations.

The Regulations provide for a non-official majority in the case of each Council.

As to vacancies in Local Legislative Councils, see s. 93, *post*.

[Indian  
Councils Act,  
1861, ss. 46,  
47 and 49.]

77. (1) When a new Lieutenant-Governorship is constituted under this Act, the Governor-General in Council may, by notification, with the sanction of His Majesty previously signified by the Secretary of State in Council, constitute the

Power to  
constitute  
new Local  
Legislatures.



Lieutenant-Governor in Legislative Council of the province, as from a date specified in the notification, a Local Legislature for that province, and define the limits of the province for which the Lieutenant-Governor in Legislative Council is to exercise legislative powers.

(2) The Governor-General in Council may, by notification, extend the provisions of this Act relating to Legislative Councils of Lieutenant-Governors, subject to such modifications and adaptations as he may consider necessary, to any province for the time being under a Chief Commissioner. [Govt. of India Act, 1912, s. 3.]

See notes to s. 74, *Ilbert's Digest*.

As to constitution of new Lieutenant-Governorships, see s. 53 (2), *ante*.

Legislative Councils for the Lieutenant-Governorships of Burma, Eastern Bengal and Assam and Bihar and Orissa and for the Chief Commissionerships of Assam and the Central Provinces were constituted under the Indian Councils Act, 1861, and the Government of India Act, 1912.

It would appear from the context that the power given by s. 47 of the Indian Councils Act, 1861, was intended to be exercised for purposes of legislation only. Thus, in 1871, the Bombay Legislative Council passed a Bill to bring under the General Regulations and Acts in force in that province certain villages received in exchange from His Highness the Nizam of Hyderabad. It was found that the limits of the province had never been altered under section 47 so as to include those villages and the Government of India were advised that the Bill was *ultra vires*—See Leg. Dep. A Pros., August, 1871, Nos. 1—9.

The present section read with s. 53 (2), *ante*, however, appears to make it clear that the power to create a new Lieutenant-Governorship and the power to constitute a Legislative Council for a newly created Lieutenant-Governorship are distinct. As to power to create new Chief Commissionerships, see s. 59, *ante*.

It should be noted that a notification under sub-section (2) does not require the sanction of His Majesty, but a further notification constituting a Legislative Council for a Chief Commissionerhip, under sub-section (1) as so extended, would probably require such sanction. See Home Dep. Proclamation No. 2642, dated 14th November, 1912, *Gazette of India*, 1912, Pt. I, p. 1383, in respect of the territories under the Chief Commissioner of Assam, and Proclamation No. 7643, *ibid*, and papers relating thereto.

No new Local Legislatures have been constituted since the passing of the Government of India Act, 1915, but for Proclamations constituting Local Legislatures for Bihar and Orissa, Assam and the Central Provinces, see the *Gazette of India*, 1912, Pt. I, p. 364, *ibid*, p. 1383, and *ibid*, 1913, Pt. I, p. 1068, respectively.

Meetings of  
Legislative  
Councils of  
Lieutenant-  
Governors, or  
Chief Com-  
missioners.

78. (1) Every Lieutenant-Governor who has no Executive Council, and every Chief Commissioner who has a Legislative Council, shall appoint a Member of his Legislative Council to be Vice-President thereof. [Indian Councils Act, 1861, s. 45; Indian Councils Act, 1909, ss. 4, 5; Govt. of India Act, 1912, s. 3.]

(2) In the absence of the Lieutenant-Governor or Chief Commissioner from any meeting of his Legislative Council

the person to preside thereat shall be the Vice-President of the Council, or, in his absence, the Member of the Council who is highest in official rank among those holding office under the Crown who are present at the meeting, or during the discussion of the annual financial statement or of any matter of general public interest [or when questions are asked], the Vice-President, or the Member appointed to preside in accordance with rules made under this Act.

(3) If any difference of opinion arises on any question brought before a meeting of the Council, the person presiding shall have a second or casting vote.

*See notes to s. 75, Ilbert's Digest.*

As to the Legislative Council of a Lieutenant-Governor who has an Executive Council, *see* s. 73 (1), *ante*. *See also* s. 73 (3), *ante*.

"Vice-President of the Council" in sub-section (2) includes a Vice-President appointed under s. 56, *ante*, by a Lieutenant-Governor who has an Executive Council. As to appointment of a Vice-President, *see notes to* ss. 48 and 56, *ante*.

The words "*highest in official rank among those holding office under the Crown*" must be taken to mean the official Member who holds the highest place in the Warrant of Precedence, and not to be limited in favour of the Advocate-General by the reference to "office under the Crown". *See* Leg. Dep. u. o. No. 774 of 1900.

As to the expression "office under the Crown", *see notes under* s. 63, *ante*, and definition of "office" in s. 134, *post*.

The word "*or when questions are asked*" were, as in s. 64 (3) and 75 (3), *ante*, inserted by the Government of India (Amendment) Act, 1916, Sch. I—*See* s. 80 (3), *post*.

As to "*the Annual Financial Statement, etc.*", and "*rules made under this Act*" *see* sections 80 (3) and 134 (7), *post*.

[Indian Councils Act, 1861, ss. 42, 43, 48; Indian Councils Act, 1892, s. 5.]

79. (1) The Local Legislature of any province has power, subject to the provisions of this Act, to make laws for the peace and good government of the territories for the time being constituting that province. Powers of Local Legislatures.

(2) The Local Legislature of any province may, with the previous sanction of the Governor-General, but not otherwise, repeal or alter as to that province any law made either before or after the commencement of this Act by any authority in British India other than that Local Legislature.

(3) The Local Legislature of any province may not, without the previous sanction of the Governor-General, make or take into consideration any law—

(a) affecting the public debt of India, or the customs duties, or any other tax or duty for the time being in force and imposed by the authority of the Governor-General in Council for the general purposes of the government of India; or

- (b) regulating any of the current coin, or the issue of any bills, notes or other paper currency ; or
- (c) regulating the conveyance of letters by the post office or messages by the electric telegraph ; or
- (d) altering in any way the Indian Penal Code ; or
- (e) affecting the religion or religious rites and usages of any class of British subjects in India ; or
- (f) affecting the discipline or maintenance of any part of His Majesty's naval or military forces ;  
or
- (g) regulating patents or copyright ; or
- (h) affecting the relations of the Government with foreign Princes or States.

(4) The Local Legislature of any province has not power to make any law affecting any Act of Parliament.

(5) Provided that an Act or a provision of an Act made by a Local Legislature, and subsequently assented to by the Governor-General in pursuance of this Act, shall not be deemed invalid by reason only of its requiring the previous sanction of the Governor-General under this Act.

*See notes under s. 76, Ilbert's Digest.*

*"Local Legislature."*—*See s. 73 (4), ante.*

*"Subject to the provisions of this Act"* refers to sub-sections (2) to (5) of this section and ss. 80, 81, 82, *post*.

*"Peace and good government."*—*See note to s. 71, ante.*

*Compare s. 65 (1), under which the Indian Legislative Council has certain extra-territorial legislative powers ; but the powers of a Local Legislature are strictly territorial.*

The "previous sanction" required by sub-sections (2) and (3) should be obtained from the Governor-General personally before the measure is introduced. It would be unconstitutional to substitute general orders for such sanction : Leg. Dep. u. o. No. 394 of 1913.

Nevertheless a Local Legislature cannot amend the Colonial Courts of Admiralty (India) Act, 1891 (XVI of 1891), inasmuch as authority to pass that Act was conferred on the Council of the Governor-General, by the Colonial Courts of Admiralty Act, 1890 (53 & 54 Vict., c. 27) ; Leg. Dep. u. o. No. 519 of 1899.

As to the power of a Local Legislature to make laws conferring jurisdiction over European British subjects, see s. 84 (c), *post*, and note thereto.

As to the power of a Local Legislature to pass any Act which would prevent a subject from suing the Secretary of State in Council in a Civil Court, see s. 32 (2), *ante*, and notes thereunder.

The interesting point whether a Local Legislature in India can create a Corporation—as it has frequently purported to do—was raised, but not decided, in *Hari v. Secretary of State for India* (1903), I. L. R. 27,

Bom., at p. 442. But see *Bell v. Municipal Commissioners for Madras* (1901), 1. L. R. 25, Mad., 457. In England the Sovereign's consent (express or implied) is by prerogative necessary, and even a statutory Corporation is no exception, because the Royal Assent is essential to the validity of the constituting statute. *Quare* whether the non-exercise of the power of disallowance reserved for the Crown in s. 82 is sufficient in the case of an Indian enactment creating a Corporation. See also s. 84 (a), *post*.

In his Despatch No. 44, dated 3rd December, 1896, the Secretary of State (Lord George Hamilton) remarked that "it appeared inconvenient to incorporate as part of a general Act, sections which are passed by a Local Legislature and are only intended to have a local application". Therefore, where a Local Legislature repeals or amends a general Act, it ought not to do so textually, but should enact the modifying provisions desired as a separate Act of the Local Legislature to take effect, with the previous sanction of the Governor-General, notwithstanding anything contained in the general Act.—Leg. Dep. u. o. Nos. 54 of 1911, and 206 of 1911.

The term "affecting" as used in sub-section (3) must be construed to mean "relating to" and not merely to mean "affecting *in nulam partem*": u. o. No 136 of 1883. Thus clause (a) would cover any Bill imposing taxation, including local taxation.

*Clause (a)*: It should be noted that clause (a) refers to taxes, etc., "for the time being in force" whereas s. 43 (1) of the Indian Councils Act, 1861, referred to taxes, etc., "now in force" which was held to limit the sub-section to taxes, etc., in force at the commencement of that Act; Leg. Dep. u. o. No. 547 of 1912.

*Clause (d)*: As to the meaning of the words "altering in any way" in clause (d), see the Despatch from the Secretary of State (Sir C. Wood, afterwards Lord Halifax), dated 1st December, 1862, and the notes thereto in App. VI, *post*. Should a Local Legislature desire textually to amend the Indian Penal Code, or to restrict its operation, or otherwise to alter its provisions, the previous and personal sanction of the Governor-General would be required, by this clause. But cases of this kind are, it is believed, unknown, and the most that the Bills of Local Councils ever do in this connection is to enlarge the volume of penal law by constituting new and special offences and adding fresh penal sanctions. The Secretary of State in 1862 seems to have admitted that such a penal clause could scarcely be said, as a matter *strictissimi juris*, to "alter in any way" the Indian Penal Code of 1860; but he desired that legislation of this kind should be jealously guarded, and, in consequence, he directed that no Bill of a Local Council containing a penal clause should be introduced without the administrative sanction of the Governor-General in Council. Effect is given to this direction by s. 3 (1) of the *Instructions to Local Governments regarding legislation in Local Councils*, *post*. When a Bill is received from a Local Government, its penal clauses as well as other provisions are considered administratively by the Administrative Department concerned in precisely the same manner as with any other case; and on its return to the Legislative Department, that Department does not submit the penal clause to the Governor-General unless—

- (a) it considers that the penal clause "alters in any way" the Indian Penal Code and, therefore, requires the Governor-General's personal sanction; or
- (b) any objection is raised, in which case the penal clause must be referred to the Governor-General under r. 10, or, it may be, r. 11 (2), of the *Rules of Business*, *post*; or

- (c) the Administrative Department concerned has expressed the opinion that the penal clause is, from the executive point of view, of such importance that it ought to be submitted to the Governor-General.

Although rule 29 of the *Rules of Business* (see *post*) no longer requires the Legislative Department to refer unofficially to the Home Department every penal clause contained in a Local Council Bill, in all cases of importance such reference should be made.—See Leg. Dep. notes on the Bombay Abkari Act, 1878 (Amendment) Bill, O. D. Nos. 211 and 1216 of 1912.

Independently of this, every Bill of a Local Council must be submitted to the Governor-General under s. 30 (3) of the *Rules of Business*, *post*.

*Clause (c)*: Hindu law and Muhammadan law are so essentially religious that any measure affecting either would seem to require the previous sanction of the Governor-General under clause (e)—see Leg. Dep. u. o. No. 344 of 1897. Legislation relating to religious endowments would also require such sanction which must be given in each individual case and no general permission can be given to a Local Government to proceed upon its own lines: Leg. Dep. u. o. No. 394 of 1913. In 1916, the Governor-General refused sanction to the introduction in the Bengal Legislative Council of a non-official Member's Bill for the Registration of Wakf Estates and control of *mutawallis* of such estates: Leg. Dep. u. o. No. 216 of 1916.

*Clause (f)*: Since even the Governor-General's Council is, by s. 65 (2), *ante*, precluded from legislating so as to repeal or in any way affect the Army Act (44 & 45 Vict., c. 58), it follows that the Governor-General could not sanction the introduction into a Local Council of any such measure though he could sanction legislation affecting the Indian Army Act, 1911 (VIII of 1911).

*Sub-section (d)*: As to the meaning of "affecting", see note to s. 65 (2), *ante*. A Local Legislature cannot extend the territorial operation of an Act of Parliament—see u. o. No. 3277, October, 1881.

Apart from statutory restrictions, no Local Government can, under the *Instructions to Local Governments*, introduce any Bill in the Local Council without obtaining the express or tacit approval of the Government of India and the Secretary of State: Leg. Dep. u. o. No. 547 of 1912. Similarly in the case of Bills by non-official Members of Local Councils, the Local Governments in granting or withholding sanction to such Bills are bound to follow any executive instructions issued by the Government of India by reason of the statutory powers of control (see sections 33 and 45, *ante*) vested in the Government of India, Leg. Dep. u. o. No. 547 of 1912. See rule 10 of the *Instructions to Local Governments regarding Legislation*, *post*.

As to assent to and disallowance of Acts of Local Legislatures, see ss. 81 and 82, *post*, and as to validity of certain laws, see s. 84, *post*.

**Business at meetings.** 80. (1) At a meeting of a Local Legislative Council no motion shall be entertained other than a motion for leave to introduce a measure into the Council for the purpose of enactment, or having reference to a measure introduced or proposed to be introduced into the Council for that purpose or having reference to some rule for the conduct of business in the Council and no business shall be transacted other [Indian Councils Act, 1861, ss. 38, 48.]

than the consideration of those motions or the alterations of those rules.

(2) It shall not be lawful for any Member of any Local Legislative Council to introduce, without the previous sanction of the Governor, Lieutenant-Governor or Chief Commissioner, any measure affecting the public revenues of the province or imposing any charge on those revenues.

[Indian  
Councils  
Act, 1909,  
ss. 5, 7.]

(3) Notwithstanding anything in the foregoing provisions of this section, the Local Government may, with the sanction of the Governor-General in Council, make rules authorising, at any meeting of the Local Legislative Council, the discussion of the annual financial statement of the Local Government, and of any matter of general public interest, and the asking of questions, under such conditions and restrictions as may be prescribed in the rules. Rules made under this sub-section for any Council may provide for the appointment of a Member of the Council to preside at any such discussion [or when questions are asked] in the place of the Governor, Lieutenant-Governor or Chief Commissioner, as the case may be, and of the Vice-President, and shall be laid before both Houses of Parliament as soon as may be after they are made, and shall not be subject to repeal or alteration by the Governor-General in Legislative Council or the Local Legislature.

*See notes under s. 77, Ilbert's Digest.*

*Compare this section with s. 67, ante, and see notes thereunder.*

As to the question whether a Legislative Council can legally be summoned for any business other than purely legislative business, *see note to s. 67, ante.*

"*Rules for the conduct of the business in the Council.*"—These words in sub-section (1) must, in view of the provisions of sub-section (3), be taken to refer to the rules for the conduct of legislative business proper referred to in s. 83, *post*.

"*Affecting the public revenues.*"—*See note to s. 67 (2), ante.*

"*Vice-President.*"—*See ss. 75 and 78, ante.*

The words "*or when questions are asked*" in sub-section (3) were inserted by the Government of India (Amendment) Act, 1916, Sch., I, *cf.* ss. 75 (3) and 78 (2), *ante*.

[Indian  
Councils  
Act, 1861,  
ss. 39, 40,  
48; Govt. of  
India Act,  
1912, ss. 1  
(1), 3.]

81. (1) When an Act has been passed at a meeting of a Local Legislative Council, the Governor, Lieutenant-Governor or Chief Commissioner, whether he was or was not present in Council at the passing of the Act, may declare that he assents to, or withholds his assent from, the Act.

Assent to  
Acts of  
Local Legis-  
latures.

(2) If the Governor, Lieutenant-Governor or Chief Commissioner withholds his assent from any such Act, the Act has no effect.

(3) If the Governor, Lieutenant-Governor or Chief Commissioner assents to any such Act, he shall forthwith

send an authentic copy of the Act to the Governor-General, and the Act shall not have validity until the Governor-General has assented thereto and that assent has been signified by the Governor-General to, and published by, the Governor, Lieutenant-Governor or Chief Commissioner.

(4) Where the Governor-General withholds his assent from any such Act, he shall signify to the Governor, Lieutenant-Governor or Chief Commissioner in writing his reason for so withholding his assent.

*See notes under s. 78, Ilbert's Digest.*

The power of assenting or withholding assent is conferred by sub-section (1) on the Governor, Lieutenant-Governor or Chief Commissioner, in person. As to power of Local Legislatures, *see s. 79, ante.*

In the case of Bills by non-official Members the Local Government in assenting to, or with holding assent from, such Bills when passed are bound to follow any executive instructions issued by the Government of India by reason of the statutory powers of control vested (*see ss. 33 and 45, ante*) in the latter: Leg. Dep. u. o. No. 547 of 1912.

*Sub-section (3)* requires Acts passed by a Local Legislature to be sent "forthwith" for the Governor-General's assent. In view of the fact that in many instances Acts have not reached the Government of India till three months after the date on which they were passed, instructions were issued to Local Governments that Acts should be sent within one month of the date on which they are passed in the Local Council: Leg. Dep. B Pros., May, 1916, No. 247.

The communication of the Governor-General's assent by telegram has been deemed sufficient—*See* Leg. Dep. A Pros., April, 1894, Nos. 42—49.

Assent has been withheld—

- (1) on grounds of principle and policy—Leg. Dep. A Pros., November, 1882, Nos. 1—14;
- (2) on the ground that the local Act was inconsistent with some general Act or otherwise *ultra vires*—Leg. Dep. A Pros., May, 1877, Nos. 89—97, and October 1877, Nos. 8—22;
- (3) for defects in form or drafting—Leg. Dept. A Pros., June, 1872, Nos. 67—80, July, 1878, Nos. 97—104, and September, 1878, Nos. 93—103, and B Pros., July, 1882, Nos. 111—113. [The later practice has been to avoid as much as possible criticism of the drafting of local Bills.]

Where there is room for doubt whether an Act passed by a Local Legislature is *ultra vires* or not, the practice is to give it the benefit of the doubt, and obtain the Governor-General's assent; and, even where it has been clear that an Act was *ultra vires* of the Local Legislature, the Governor-General has nevertheless given his assent. It is difficult to classify the latter cases further than by saying that the Governor-General has given his assent to Acts that are *ultra vires*—

- (a) on the ground of urgency.—*See* Leg. Dep. A Pros., April, 1882, Nos. 424—444;

- (b) on the ground that the conflict between the local law and the Imperial Act would in practice rarely, if ever, occur.—*See* Leg. Dep. A Pros., August, 1879, Nos. 1—17;
- (c) on the ground of inconvenience to a Local Government in having to re-enact the measure—*See* Leg. Dep. A Pros., July, 1876, Nos. 34—96;
- (d) subject to the conditions—
  - (i) that the obnoxious provisions would be construed so as not to conflict with the Imperial Act.—*See* Leg. Dep. A Pros., July, 1878, Nos. 12—23;
  - (ii) that the Local Government would take steps to repeal the obnoxious provisions at the earliest possible date.—*See* Leg. Dep. A Pros., September, 1834, Nos. 32—65.

*See*, too, the Madras Irrigation Bill—Leg. Dep. A Pros., August, 1900, Nos. 14—21; and the Bombay Land-revenue Code Bill—*ibid*, October, 1901, Nos. 1—25.

In the case of the Orissa Tenancy Bill, 1912, which was passed by the Bengal Legislative Council immediately before Bengal was constituted a Governorship and the new province of Bihar and Orissa was created, the Governor-General's assent was withheld on the ground that the Lieutenant-Governor of Bengal and his Legislative Council had ceased to exist and that consequently the provisions of ss. 40 and 48 of the Indian Councils Act, 1861, could not be given effect to: Leg. Dep. A Pros., June, 1912, Nos. 56—58. A Bill was subsequently introduced into, and passed by, the Bihar and Orissa Legislative Council as the Orissa Tenancy Act, 1913.

Assent has been given to an Act passed by a Local Legislature even although it contained penal clauses to which the previous sanction of the Governor-General in Council had not been obtained, as required by the Secretary of State's Despatch No. 35 (Legislative), dated 1st December, 1862, App. VI, *post*.

The Governor-General's power of withholding assent from an Act of a Local Legislature is not compromised by the fact that the penal clauses have been approved, or that administrative approval of the measure has been expressed.—*See* the second proviso to r. 4 of the *Instructions to Local Governments, post*.

An Act of a Local Legislature does not become law until it has been assented to by the Governor-General, and such assent has been published. Hence it should be expressed so as to come into operation on a particular future date, unless there is in the local Statute-book such a provision as that to be found in s. 4 (1) of the Burma General Clauses Act, 1898 (Burma Act I of 1898), s. 3 of the Punjab General Clauses Act, 1898, (Punjab Act I of 1898), or s. 6 (1) of the Bengal General Clauses Act, 1899 (Bengal Act I of 1899). In that event the date on which each enactment actually came into force should be prominently indicated on all reprints of it.

As to the saving of an Act requiring the previous sanction of the Governor-General which has been subsequently assented to by him, *see* s. 79 (5), *ante*.

As soon as a law made by a subordinate legislature has been assented to by the Governor-General, it is published as an Act, and the Acts of each Local Council are numbered consecutively in a separate series for each calendar year.



A Local Legislature cannot extend the territorial operation of an Act of Parliament.—*See* Leg. Dep. [u. o. No. 3277, October, 1881.

A Local Legislative Council may deal freely with the jurisdiction of the Courts in so far as that jurisdiction rests on an Act of the legislature in India.—*See* s. 79(2), *ante*.

As to the validity of a law made by a Local Legislature conferring on magistrates jurisdiction over European British subjects, *see* s. 84(c), *post*. The power of a Local Legislature to make laws as to such jurisdiction was extended by the Indian Councils Act, 1871, which has been repealed by this Act. Section 2 of the Act of 1871 has been reproduced in s. 447 of the Code of Criminal Procedure, 1898.

For form of recording assent, *see* App. XII, No. 13, *post*.

[Indian Councils Act, 1861, ss. 41, 43; Govt. of India Act, 1912, ss. 1 (1), 3.] 82. (1) When any such Act has been assented to by the Governor-General, he shall send to the Secretary of State an authentic copy thereof, and it shall be lawful for His Majesty to signify, through the Secretary of State in Council, his disallowance of any such Act. Power of Crown to disallow Act of Local Legislatures.

(2) Where the disallowance of any such Act has been so signified, the Governor, Lieutenant-Governor or Chief Commissioner shall forthwith notify the disallowance, and thereupon the Act, as from the date of the notification, shall become void accordingly.

This power of disallowance conferred on the Crown has apparently never been used.

As in the case of Acts of the Governor-General's Council, it is usual for the Secretary of State to send a despatch intimating that an Act passed by a Local Legislature has been considered by him in Council and will be left to its operation. Copies of these despatches are sent to the Local Governments concerned; but, as explained in the note to s. 69, *ante*, action on a law need not be deferred pending the receipt of such an intimation.

[Indian Councils Act, 1861, ss. 37, 43; Govt. of India Act, 1912, ss. 1 (1), 3.] 83. (1) The Local Government of any province for which a Local Legislative Council is hereafter constituted under this Act shall, before the first meeting of that Council, and with the sanction of the Governor-General in Council, make rules for the conduct of legislative business in that Council (including rules for prescribing the mode of promulgation and authentication of laws passed by that Council). Rules for conduct of legislative business.

(2) A Local Legislature may, subject to the assent of the Governor, Lieutenant-Governor or Chief Commissioner, alter the rules for the conduct of legislative business in the Local Legislative Council (including rules prescribing the mode of promulgation and authentication of law passed by the Council); but any alteration so made may be disallowed by the Governor-General in Council, and if so disallowed shall have no effect.

The rules referred to in this section are rules for the conduct of legislative business as distinct from the rules made under s. 80 (3), *ante*.

The Legislative Business Rules for Local Councils which are now in force were made under s. 37 of the Indian Councils Act, 1861, and have been amended from time to time.

*Validity of Indian Laws.*

84. A law made by any authority in British India shall not be deemed invalid solely on account of any one or more of the following reasons:—

Removal of doubts as to validity of certain Indian laws.

[Indian Councils Act, 1861, s. 24.]

(a) in the case of a law made by the Governor-General in Legislative Council [or a Local Legislature], because it affects the prerogative of the Crown ; or

[Indian Councils Act, 1861, ss. 14, 33.]

(b) in the case of any law, because the requisite proportion of members not holding office under the Crown in India was not complete at the date of its introduction into the Council or its enactment ; or

[Indian Councils Act, 1871, s. 1.]

(c) in the case of a law made by a Local Legislature, because it confers on magistrates, being justices of the peace, the same jurisdiction over European British subjects as that legislature, by Acts duly made, could lawfully confer on magistrates in the exercise of authority over other British subjects in the like cases.

[A law made by any authority in British India and repugnant to any provision of this or any other Act of Parliament shall, to the extent of that repugnancy, but not otherwise, be void.]

*See notes under s. 79, Ilbert's Digest.*

The words " or a Local Legislature " in clause (a) were inserted by the Government of India (Amendment) Act, 1916, s. 2 (2) which applies to laws made as well before as after the commencement of that Act.—See *post*. There was no such saving as regards Acts of Local Legislatures in the Indian Councils Act, 1861, and it was consequently inferred that a Local Legislature cannot affect the Royal Prerogative. But the contrary was held in *Bell v. Municipal Commissioners for Madras* (1901), 1 L. R., 25 Mad., 457.

As to the Royal Prerogative and the application to an Indian Legislature of the rule of English law that the Crown is not bound by an enactment unless by express terms or necessary intendment, see notes to s. 1, *ante*. Under sections 20, 28 (3), 30 (3), *ante*, the revenues of India and all Government property are vested in the Crown, and it is probable that the reference to the prerogative of the Crown, in clause (a) above relates specially to laws which might be held indirectly to affect the revenues of India, *e.g.*, laws dealing with taxation or land-revenue. Under s. 106 (2), *post*, revenue matters are excluded from the original jurisdiction of High Courts.

Clause (b) refers to the provisions of ss. 63 (3), or 74 (2), or 76 (2), *ante*, as the case may be.

Clause (c) was inserted by the Government of India (Amendment) Act, 1916, s. 2 (2), *post*, which applies to laws made as well before as after the commencement of that Act. [Cf. s. 2 of 28 and 29 Viet., c. 63 (*Act to remove doubts as to the validity of Colonial Laws*)]

"*Jurisdiction over European British Subjects*": The power of a Local Legislature to make laws as to such jurisdiction was extended by the Indian Councils Act, 1871. As to the difficulties which gave rise to the passing of that Act, see Leg. Dep. A Pros., September, 1870, Nos. 7--25. See in this connection Reg. v. Reay (7 Bom. H. C. R., Cr. p.6) and the remarks on that case in note in App. XI, *post*.

## PART VII.

### SALARIES, LEAVE OF ABSENCE, VACATION OF OFFICE, APPOINTMENTS, ETC.

East India Company Act, 1793, s. 32; East India Company Act, 1813, s. 82; Govt. of India Act, 1833, ss. 70, 77; Govt. of India Act, 1853, s. 35; Indian Councils Act, 1861, s. 4; Indian Salaries and Allowances Act, 1880, ss. 2, 4.]

85. (1) There shall be paid to the Governor-General of India, and to the other persons mentioned in the Second Schedule to this Act, out of the revenues of India, such salaries, not exceeding in any case the maximum specified in that behalf in that Schedule, and such allowances (if any) for equipment and voyage, as the Secretary of State in Council may by order fix in that behalf, and subject to, or in default of, any such order, as are payable at the commencement of this Act :

Salaries and allowances of Governor-General and certain other officials in India.

(2) Provided as follows :—

- (a) an order affecting salaries of members of the Governor-General's Executive Council may not be made without the concurrence of a majority of votes at a meeting of the Council of India ;
- (b) if any person to whom this section applies holds or enjoys any pension or salary, or any office of profit under the Crown or under any public office, his salary under this section shall be reduced by the amount of the pension, salary or profits of office so held or enjoyed by him ;
- (c) nothing in the provisions of this section with respect to allowances shall authorize the imposition of any additional charge on the revenues of India.

(3) The remuneration payable to a person under this section shall commence on his taking upon himself the execution of his office, and shall be the whole profit or advantage which he shall enjoy from his office during his continuance therein.

See notes under s. 80, *Ilbert's Digest*.

"*Maximum specified in that behalf*":—No such statutory maximum has been fixed in the Second Schedule as regards Ordinary Members of the Governor-General's Executive Council.

The annual salaries of the Governor-General and of an Ordinary Member of Council were, by s. 76 of the Government of India Act, 1833 (3 and 4 Will. 4, c. 85), fixed at "two hundred and forty thousand sicca rupees" and "ninety-six thousand sicca rupees", respectively, subject to such reduction as the Court of Directors, with the sanction of the Board of Control, might at any time think fit. S. 76, in so far as it

fixed the salary of an "Ordinary Member of the Council of India", was *virtually* repealed by s. 4 of the Indian Councils Act, 1861, and subsequently expressly repealed by the Statute Law Revision Act, 1878 (41 & 42, Vict. c. 79). The power to reduce had been exercised more than once and the salary stood at Rs. 70,500 *per annum* in 1898, when the Secretary of State, acting with the advice of the *Law Officers* on the view—formerly regarded as doubtful—that the power to reduce involved a power to raise, subsequently increased it to Rs. 80,000, which is the actual salary now. S. 6 of despatch from the Secretary of State (Lord George Hamilton), No. 69 (Financial), dated 7th April, 1898. "Sicca" signifies a seal or die, and the "Sicca rupee" was the Mughal rupee, weighing 192 grs., of which 176 were pure silver. The exchange value was two shillings and two pence.

As to "*allowances for equipment and voyage*,"—section 2 of the Indian Salaries and Allowances Act, 1880 (43 and 44 Vict., c. 3) empowered the Secretary of State in Council to fix, alter or abolish such allowances in the cases of the Governor-General and the members of his Council, the Governors of Madras and Bombay and the Members of their Councils, the Commander-in-Chief of the Forces in India, and the Bishops and Archdeacons of Calcutta, Madras and Bombay. The Statute was applied also to the Governor of Bengal and the Members of his Council by the Government of India Act, 1912 (2 and 3 Geo. 5, c. 6), s. 1. For the allowances now fixed, see the *Civil Service Regulations*, Art. 1087, and App. 28.

As to proviso (a), see s. 9, *ante*.

The words "*additional charge on the revenues of India*" in proviso (c) are taken from s. 4 of the Statute of 1880 referred to above but the word "additional" presents certain difficulties of interpretation. What are the limits which it refers to? Does it refer to the old statutory limits fixed by s. 76 of the Government of India Act, 1833, which was repealed by the Statute of 1880, or does it refer to the limits imposed by rules or orders in force at the commencement of the present Statute of 1915? The Government of India suggested the omission of this clause when considering the Consolidation Bill, 1914.—See Serial No. 40 in A Pros., March, 1915, Nos. 23—31.

*Sub-section* (3) would not deprive Members of Council of the privileges and conveniences allowed to them in the matter of travelling, etc.: Leg. Dep. u. o. No. 201 of 1889. Nor would it require a Member to take his seat under the usual formalities: Leg. Dep. u. o. No. 1064, December 1876. Salary will commence from the date on which he actually takes charge: u. o. Nos. 261 and 290 of 1888. As to Commander-in-Chief, see u. o. No. 428 of 1899.

For similar provisions as to the salaries and allowances of Judges of the High Courts and Bishops and Archdeacons, see ss. 104 and 118, *post*.

Leave of absence to Members of Executive Councils.

86. (1) The Governor-General in Council may grant [Indian Councils Act, 1861, s. 26; Govt. of India Act, 1912, s. 1 (1)].

to any of the Ordinary Members of his Executive Council, and a Governor in Council [and a Lieutenant-Governor in Council] may grant to any Member of his Executive Council, leave of absence under medical certificate for a period not exceeding six months.

(2) Where a Member of Council obtains leave of absence in pursuance of this section, he shall retain his office during his absence, and shall on his return and resumption of his

duties be entitled to receive half his salary for the period of his absence ; but if his absence exceeds six months his office shall become vacant.

The words in square brackets in sub-section (1) were inserted by the Government of India (Amendment) Act, 1916, Sch. I, *post*. There was formerly no statutory provision for the grant of leave to Members of a Lieutenant-Governor's Executive Council.

Having regard to s. 32 of the Interpretation Act, 1889, there appears to be no legal bar to the granting of leave when and as often as it may be necessary so long as the absence does not exceed six months. It is doubtful if this was an intentional change from the law under s. 26 of the Indian Councils Act, 1861 : Leg. Dep. u. o. 206 of 1918.

*Quære* whether the period of leave can be extended beyond six months by prefixing or affixing holidays.—Application of Arts. 537, 539 of the *Civil Service Regulations* : Leg. Dep. u. o. Nos. 173—244 of 1914.

This section removes, in the case of an Ordinary Member of Council, the disability as regards the taking of leave to Europe still imposed on the Governor-General, the Governors of Madras, Bengal and Bombay and the Commander-in-Chief, by s. 87, *post*.

Under s. 47(3), *ante*, should the Commander-in-Chief happen to be resident at Calcutta, Madras or Bombay—a contingency which has never occurred and is hardly likely to occur—he would, for the time being, be a member of the Local Executive Council. But he would still be under the disability imposed by s. 87 (1), *post*.

Leave to an Ordinary Member of Council, if taken out of India, commences, in the absence of special orders to the contrary, on the day after he embarks at any port in India, except Aden, and ends on the day before he disembarks at any such port, provided that he has not been relieved of charge of his office until he embarks and that he resumes charge immediately upon his disembarkation.—*See the Civil Service Regulations*, Art. 538.

For form of notification granting an Ordinary Member leave, *see* App. XII, No. 5, *post*.

[East India Company Act, 1793, s. 37 ; Govt. of India Act, 1833, s. 79 ; Govt. of India Act, 1912, s. 1 (1).] 87. (1) If the Governor-General, or a Governor or the Commander-in-Chief of His Majesty's forces in India, and, to absence subject to the foregoing provisions of this Act as to leave from India. of absence, if any Ordinary Member of the Executive Council of the Governor-General, or any member of the Executive Council of a Governor departs from India, intending to return to Europe, his office shall thereupon become vacant.

\* \* \* \* \*

*See note (a) under s. 82, Ilbert's Digest.*

The words "*subject to the foregoing provisions of this Act as to leave of absence*" refer to the provisions of s. 86, *ante*. Reading ss. 86, 87 together it follows that the Governor-General, a Governor and the Commander-in-Chief are the only three functionaries who are absolutely precluded from taking leave to Europe during their tenure of office, and this disability cannot be removed by rules made under s. 94, *post*. A special Act of Parliament (50 Vict., Sess. 2, c. 10) was passed to enable the Duke of Connaught when Commander-in-Chief in Bombay to visit England for the Jubilee of the late Queen Victoria.

It should be noted that this sub-section does not apply to Lieutenant-Governors or to members of a Lieutenant-Governor's Executive Council. The salary of a Lieutenant-Governor ceases on his going on deputation to Europe but not his lien on his appointment: Leg. Dep. u. o. No. 387 of 1913.

*Sub-sections (2), (3), (4) and (5) were repealed as obsolete by the Government of India (Amendment) Act, 1916, Sch. II, post.—See in this connection notes (b), (c) and (d) under s. 82, Ilbert's Digest.*

[East India Company Act, 1793, s. 27; Govt. of India Act, 1833, s. 61; Indian Councils Act, 1861, s. 5.]

**88. (1)** His Majesty may, by warrant under His Royal Conditional Sign Manual, appoint any person conditionally to succeed to appointments any of the offices of Governor-General, Governor, Ordinary Member of the Executive Council of the Governor-General, or Member of the Executive Council of a Governor, in the event of the office becoming vacant, or in any other event or contingency expressed in the appointment, and revoke any such conditional appointment.

(2) A person so conditionally appointed shall not be entitled to any authority, salary or emolument appertaining to the office to which he is appointed, until he is in the actual possession of the office.

*See notes under s. 83, Ilbert's Digest.*

For form of notification making a conditional appointment, see App. XII, No. 2, *post*.

[Govt. of India Act, 1858, s. 63; Indian Councils Act, 1909, s. 4.]

**89. (1)** If any person entitled under a conditional Power for appointment to succeed to the office of Governor-General, Governor-General to exercise powers before taking seat, or appointed absolutely to that office is in India on or after the event on which he is to succeed, and thinks it necessary to exercise the powers of Governor-General before he takes his seat in Council, he may make known by notification his appointment and his intention to assume the office of Governor-General.

(2) After the notification, and thenceforth until he repairs to the place where the Council may assemble, he may exercise alone all or any of the powers which might be exercised by the Governor-General in Council.

(3) All acts done in the Council after the date of the notification, but before the communication thereof to the Council, shall be valid, subject nevertheless, to revocation or alteration by the person who has so assumed the office of Governor-General.

(4) When the office of Governor-General is assumed under the foregoing provision, the Vice-President, or, if he is absent, the Senior Ordinary Member of the Council then present, shall preside therein, with the same powers as the Governor-General would have had if present.

*Compare sub-section (4) with s. 42, ante, and see notes thereunder As to appointment of Vice-President, see s. 38, ante.*

Temporary  
vacancy in  
office of  
Governor-  
General.

90. (1) If a vacancy occurs in the office of Governor-General when there is no conditional or other successor in India to supply the vacancy, the Governor who was first appointed to the office of Governor by His Majesty shall hold and execute the office of Governor-General until a successor arrives or until some person in India is duly appointed thereto.

[East India Company Act, 1793, s. 50; Indian Councils Act, 1861, s. 50.]

(2) Every such acting Governor-General, while acting as such, shall have, and may exercise, all the rights and powers of the office of Governor-General, and shall be entitled to receive the emoluments and advantages appertaining to the office, foregoing the salary and allowances appertaining to his office of Governor; and his office of Governor shall be supplied, for the time during which he acts as Governor-General, in the manner directed by this Act with respect to vacancies in the office of Governor.

[Indian Councils Act, 1861, s. 51.]

(3) If, on the vacancy occurring, it appears to the Governor, or, who by virtue of this section holds and executes the office of Governor-General, necessary to exercise the powers thereof before he takes his seat in Council, he may make known by notification his appointment, and his intention to assume the office of Governor-General, and thereupon the provisions of this Act respecting the assumption of the office by a person conditionally appointed to succeed thereto shall apply.

[East India Company Act, 1793, ss. 29, 30; Govt. of India Act, 1833, s. 62; Indian Councils Act, 1861, s. 51; Indian Councils Act, 1909, s. 4.]

(4) Until such a Governor has assumed the office of Governor-General, if no conditional or other successor is on the spot to supply such vacancy, the Vice-President, or, if he is absent, the Senior Ordinary Member of the Executive Council shall hold and execute the office of Governor-General until the vacancy is filled in accordance with the provisions of this Act.

(5) Every Vice-President or other Member of Council so acting as Governor-General, while so acting, shall have, and may exercise, all the rights and powers of the office of Governor-General and shall be entitled to receive the emoluments and advantages appertaining to the office, foregoing his salary and allowances as Member of Council for that period.

"When no provisional successor to the office of Governor-General shall be in India, any vacancy occurring in that office will, until the arrival of a successor appointed by His Majesty, be supplied by one of the highest functionaries in India holding office under the immediate appointment of the Crown, and, until he assumes the function of Governor-General, the Government will be administered, as heretofore, by the Senior Ordinary Member of Council, as would be done under the provisions of the 3rd and 4th Will. 4, c. 85, s. 62, if no provisional successor were on the spot."—See s. 37 of the Despatch from the Secretary of State (Sir C. Wood, afterwards Lord Halifax), dated the 9th August, 1861, *post*. Thus Lord Napier of Merchiston, Governor of Madras,

acted as Governor-General until the arrival of Lord Northbrook after the assassination of Lord Mayo in 1872; and pending the assumption of office by Lord Napier, Sir John Strachey officiated as Governor-General.

*"Conditional Successor."*—See s. 88, *ante*.

The words "*the provisions of this Act respecting the assumption, etc.*" in sub-section (3) refer to s. 89, *ante*.

*Sub-section (4):* As to *Vice-President* and *Senior Ordinary Member of Council*, see ss. 38 and 42, *ante*, and notes thereunder.

[East India Company Act, 1793, ss. 29, 30, 50; Govt. of India Act, 1833, s. 63; Indian Councils Act, 1909, s. 4; Govt. of India Act, 1912, s. 1.]

91. (1) If a vacancy occurs in the office of Governor when no conditional or other successor is on the spot to supply the vacancy, the Vice-President, or, if he is absent, the Senior Member of the Governor's Executive Council, or, if there is no Council, the Chief Secretary to the Local Government, shall hold and execute the office of Governor until a successor arrives, or until some other person on the spot is duly appointed thereto.

Temporary vacancy in office of Governor.

(2) Every such acting Governor shall, while acting as such, be entitled to receive the emoluments and advantages appertaining to the office of Governor, foregoing the salary and allowances appertaining to his office of Member of Council or Secretary.

*"Conditional Successor."*—See s. 88, *ante*.

As to *Vice-President* and *Senior Member*, see ss. 48 and 51, *ante*. Presumably by "*Senior Member*" here is meant the "*Senior Civil Member*" mentioned in ss. 51 and 75 (3).

The words "*or if there is no Council*" refer to the provisions of s. 46 (3), *ante*, which confers on the Secretary of State the power to suspend or revoke the appointment of a Governor's Executive Council.

[East India Company Act, 1793, ss. 31, 34; Indian Councils Act, 1861, s. 27; Govt. of India Act, 1912, s. 1.]

92. (1) If a vacancy occurs in the office of an Ordinary Member of the Executive Council of the Governor-General or a Member of the Executive Council of a Governor, and there is no conditional or other successor present on the spot, the Governor-General in Council, or Governor in Council, as the case may be, shall supply the vacancy by appointing a temporary Member of Council.

Temporary vacancy in office of Member of an Executive Council.

(2) Until a successor arrives the person so appointed shall hold and execute the office to which he has been appointed, and shall have, and may exercise, all the rights and powers thereof, and shall be entitled to receive the emoluments and advantages appertaining to the office, foregoing all emoluments and advantages to which he was entitled at the time of his being appointed to that office.

(3) If any Ordinary Member of the Executive Council of the Governor-General or any Member of the Executive Council of a Governor is, by infirmity or otherwise, rendered incapable of acting, or of attending to act as such, or is absent on leave [or special duty], then, if any person has been conditionally appointed to succeed to his office and



is on the spot, the place of that Member shall be supplied by that person, and, if no person conditionally appointed to succeed to the office is on the spot, the Governor-General in Council or Governor in Council, as the case may be, shall appoint some person to be a Temporary Member of Council.

(4) Until the return to duty of the Member so incapable or absent, the person conditionally or temporarily appointed shall hold and execute the office to which he has been appointed and shall have, and may exercise, all the rights and powers thereof, and shall be entitled to receive half the salary of the Member of Council whose place he fills, and also half the salary of any other office which he may hold, if he hold any such office, the remaining half of such last-named salary being at the disposal of the Governor-General in Council or Governor in Council, as the case may be.

(5) Provided as follows :—

(a) no person may be appointed a Temporary Member of Council who might not have been appointed under this Act to fill the vacancy supplied by the temporary appointment ; and

(b) if the Secretary of State inform the Govern- [Indian  
or-General that it is not the intention of His Councils  
Majesty to fill a vacancy in the Governor- Act, 1874,  
General's Executive Council, no temporary s. 2.]  
appointment may be made under this section  
to fill the vacancy, and if any such temporary  
appointment has been made before the date of  
the receipt of the information by the Governor-  
General, the tenure of the person temporarily  
appointed shall cease from that date.

“ *Conditional Successor.* ”—See s. 88, *ante*.

“ *Ordinary Member.* ”—The Commander-in-Chief is not an Ordinary Member but may be appointed an “ Extraordinary ” Member of the Governor-General's Council under s. 37, *ante*. He may, on the happening of the contingency mentioned in s. 47 (3), be temporarily a Member of a Governor's Council.

For form of notification appointing a temporary Member of Council, see App. XII, No. 3, *post*.

As to the words “ *by infirmity or otherwise* ” in sub-section (3), Mr. Stokes in 1871 advised that these words might be construed as meaning “ by infirmity or some other event not under the Member's control ” : Leg. Dep. A. Pros, March, 1879, No. 3. A narrower construction was implied by the Secretary of State's ruling in the case of Mr. Chaubal, Member of the Executive Council of the Governor of Bombay, that, on his appointment as Member of the Public Services Commission, Mr. Chaubal must be held to have vacated his office of Ordinary Member of the Bombay Council though he had not tendered a formal resignation, and that his inability to attend Council could not

be said to be due to his "infirmity or otherwise" within the meaning of s. 27 of the Indian Councils Act, 1861 : Leg. Dep. u. o. Nos. 295 and 317 of 1913.

It was to meet this difficulty experienced in Mr. Chaubal's case that the words "or special duty" were inserted in sub-section (3) by the Government of India, Amendment, Act, 1916, Sch. I.—*See* Leg. Dep. u. o. No. 33 of 1916 (*Explanatory Note to Bill*).

*Proviso (a).*—As to qualifications for office of Member of the Executive Council of the Governor-General or a Governor—*see* respectively, ss. 36 and 47, *ante*.

*Proviso (b).*—Would seem to apply only when there are six Ordinary Members of the Governor-General's Council—*cf.* s. 36 (2), *ante*, which requires that there *shall be* at least five Ordinary Members.

When the first Public Works Member was appointed under s. 1 of the Indian Councils Act, 1874, there were separate Members in charge of the Home and Revenue Departments; but on the retirement of one of these (Mr. Gibbs) on 1st May, 1885, no steps were taken to fill up the vacancy, the Home and Revenue Departments were placed under one Councilor, and the number of Ordinary Members again became five. This arrangement continued till 1904, when all reference to "public works purposes" in the Statute was repealed by the Indian Councils Act, 1904, the Public Works Member disappeared, and a sixth Member was appointed for the new Department of Commerce and Industry. For the existing arrangement of Departments, *see* the note to s. 2 of the *Rules of Business, post*.

[Indian Councils Act, 1861, ss. 12, 31, 48 ;  
Indian Councils Act, 1892, s. 4(1) ;  
Government of India Act, 1912, ss. 1(1), 3.]

93. (1) A nominated or elected Member of the Indian Legislative Council or of a Local Legislative Council may resign his office to the Governor-General or to the Governor, Lieutenant-Governor or Chief Commissioner, as the case may be, and on the acceptance of the resignation the office shall become vacant.

(2) If for a period of two consecutive months any such Member is absent from India or unable to attend to the duties of his office, the Governor-General, Governor, Lieutenant-Governor or Chief Commissioner, as the case may be, may, by notification published in the *Government Gazette*, declare that the seat in Council of that Member has become vacant.

"*Indian Legislative Council*" is the Legislative Council of the Governor-General.—*See* s. 63(1), *ante*.

The filling of vacancies and the term of the office of persons elected or appointed to fill vacancies is provided for by the existing Regulations made under the Indian Councils Act, 1909 (*See now* ss. 63, 74, 76, 77, *ante*).

[India Officers' Salaries Act, 1837, ss. 1, 2, 3 ; Government of India Act, 1853, s. 32.]

94. Subject to the provisions of this Act, the Secretary of State in Council may, with the concurrence of a majority of votes at a meeting of the Council of India, make rules as to the absence on leave [or special duty] of persons in the service of the Crown in India, and the terms as to continuance, variation or cessation of pay, salary and allowances on which any such [absence may be permitted].

The opening words refer to the provisions of ss. 86 and 87, *ante*.

"*With the concurrence of a majority of votes.*"—See s. 9, *ante*.

As to the words "*or special duty*" which were inserted by the Government of India (Amendment) Act, 1916, Sch. I, see s. 92 (3) in which the same words were inserted.

The words "*absence may be permitted*" were substituted for "*leave may be granted*" by the same Statute.

Power to make rules as to Indian appointments.

95. (1) The Secretary of State in Council, with the concurrence of a majority of votes at a meeting of the Council of India, may make rules for distributing between the several authorities in India the power of making appointments to, and promotions in offices under the Crown in India and may reinstate officers and servants suspended or removed by any of those authorities. [Govt. of India Act, 1833, s. 78; Govt. of India Act, 1858, s. 30.]

(2) Subject to such rules, all appointments to offices and commands in India, and all promotions, which, by law or under any regulations, usage or custom, are, at the commencement of this Act, made by any authority in India, shall, subject to the qualifications, conditions and restrictions then affecting such appointments and promotions, respectively, continue to be made in India by the like authority.

This section supplements s. 19, *ante*.

"*With the concurrence of a majority of votes.*"—See s. 9, *ante*.

The appointment of Secretary to the Government of India would be made under this section. Such appointments have always been made by the Governor-General and by s. 30 of the Government of India Act, 1858 (21 and 22 Vict., c. 106), they were vested in him by law and did not require the sanction of the Secretary of State: Leg. Dep. u. o. No. 87 of 1909 (*Erle Richards' Minutes*, No. 144). For an exception to this rule, see s. 100, *post*.

It may be noted that by virtue of s. 18 (5) of the Interpretation Act, 1889, "India" in this section will also include Native States, whereas "India" in s. 30 of the Government of India Act, 1850, meant "British India" (See definition in s. 1); the extension was made to conform to existing practice (See *Notes on Clauses* in A Pros. March, 1915, Nos. 23—31).

No disabilities in respect of religion, colour or place of birth.

96. No native of British India, nor any subject of His Majesty resident therein, shall, by reason only of his religion, place of birth, descent, colour or any of them, be disabled from holding any office under the Crown in India. [Govt. of India Act, 1833, s. 87.]

See notes under s. 91, *Ilbert's Digest*.

The words "natural-born" which occurred before the words "subject of His Majesty" in s. 87 of the Government of India Act, 1833, have been omitted here in order to give effect to s. 3 of the British Nationality and Status of Aliens Act, 1914 (4 and 5 Geo. 5, c. 17), by including *naturalized* British subjects.

[96-A. Notwithstanding anything in any other enactment, the Governor-General in Council, with the approval of the Secretary of State in Council, may, by notification, declare that, subject to any conditions or restrictions prescribed in the notification, any named ruler or subject of any State in India shall be eligible for appointment to any civil or military office under the Crown to which a native of British India may be appointed, or any named subject of any State, or any named member of any independent race or tribe, in territory adjacent to India, shall be eligible for appointment to any such military office.]

The provisions of this section are new and no declaration has yet been made under it. It was inserted by s. 3 of the Government of India (Amendment) Act, 1916. For a full explanation of the section and the way in which its provisions came to be drafted, see *Explanatory Note* to draft Bill and *Notes* in Leg. Dep. u. o. No. 33 of 1916.

“*Conditions or restrictions prescribed in the notification*” : Compliance with rules or restrictions made by Local Governments or authorities could be directed by the notification.

“*To which a native of British India may be appointed*” : The object of these words is to make it clear that Ruling Chiefs and their subjects will not be in a better position than natives of British India.

“*Territory adjacent to India*” : These words will bring within the purview of the section subjects of States outside “India” as defined in s. 18 (5) of the Interpretation Act, 1889, as well as members of trans-border tribes for purposes of recruitment for the army.

## PART VIII.

### THE INDIAN CIVIL SERVICE.

[Govt. of India Act, 1858, s. 32.]

97. (1) The Secretary of State in Council may, with the advice and assistance of the Civil Service Commissioners, make rules for the examination, under the superintendence of those Commissioners, of British subjects [and of persons in respect of whom a declaration has been made under the last foregoing section] who are desirous of becoming candidates for appointment to the Indian Civil Service.

(2) The rules shall prescribe the age and qualifications of the candidates, and the subjects of examination.

[(2a) The admission to the Indian Civil Service of a British subject who or whose father or mother was not born within His Majesty's dominions shall be subject to such restrictions as the Secretary of State in Council, with the advice and assistance of the Civil Service Commissioners, may think fit to prescribe, and all such restrictions shall be included in the rules.]

Rules for admission to the Indian Civil Service.

(3) All rules made in pursuance of this section shall be laid before Parliament within fourteen days after the making thereof, or, if Parliament is not then sitting, then within fourteen days after the next meeting of Parliament.

(4) The candidates certified to be entitled under the rules shall be recommended for appointment according to the order of their proficiency as shown by their examination.

(5) Such persons only as are so certified may be appointed or admitted to the Indian Civil Service by the Secretary of State in Council.

*See notes to s. 92, Ilbert's Digest.*

*Rules.*—The existing rules are saved by ss. 130 (a) and 134 (7), *post.*

The expression "*British subjects*" in sub-section (1) is used in place of the expression "natural born subjects of His Majesty" used in s. 32 of the Government of India Act, 1858, in order to give effect to s. 3 of the British Nationality and Status of Aliens Act, 1914 (4 & 5 Geo. 5, c. 17).

The words within square brackets in sub-section (1) were inserted by s. 4 of the Government of India (Amendment) Act, 1916, as consequential upon the insertion by the same Act of s. 96 A., *ante.*

*Sub-section (2a)* was inserted by s. 4 of the same Act and is intended to impose restrictions on the admission of naturalized British subjects and of persons who though natural born British subjects are the sons of either aliens or naturalized British subjects.—*See Leg. Dep. u. o. 33 of 1916 (Explanatory Note to Bill).*

For power to the Secretary of State to appoint persons to the Indian Civil Service without examination during the present war, and a period not exceeding two years thereafter, *see* the Indian Civil Service (Temporary Provisions) Act, 1915 (5 & 6 Geo. 5, c. 87).

Offices  
reserved  
to the Indian  
Civil Service.

98. Subject to the provisions of this Act, all vacancies happening in any of the offices specified or referred to in the Third Schedule to this Act, and all such offices which may be created hereafter, shall be filled from amongst the members of the Indian Civil Service. [Indian Civil Service Act, 1861, s. 2.]

"*Subject to the provisions of this Act*" refers to ss. 99 and 100, *post.*

The words "*all vacancies happening in any of the offices*" apply also to temporary vacancies notwithstanding the provisions enacted in s. 100, *post* : Leg. Dep. u. o. No. 702 of 1884; *Hobhouse, Minutes* No. 52 (1874).

"*All such offices which may be created hereafter*" would include, *e.g.*, Commissionerships subsequently created in a province known in 1861 as a Regulation Province.—Leg. Dep. u. o. Nos. 884 of 1900, 257 of 1914.

In addition to the offices reserved under this section, at least one-third of the Judges of a High Court must, under s. 101 (4), *post*, be members of the Indian Civil Service.

[Govt. of  
India Act,  
1870, s. 6.]

99. (1) The authorities in India, by whom appointments are made to offices in the Indian Civil Service, may appoint to any such office any person of proved merit and ability domiciled in British India and born \* \* \* of parents habitually resident in India and not established there for temporary purposes only, although the person so appointed has not been admitted to that service in accordance with the foregoing provisions of this Act. Power to appoint certain persons to reserved offices.

(2) Every such appointment shall be made subject to such rules as may be prescribed by the Governor-General in Council and sanctioned by the Secretary of State in Council with the concurrence of a majority of votes at a meeting of the Council of India.

(3) The Governor-General in Council may, by resolution, define and limit the qualification of persons who may be appointed under this section, but every resolution made for that purpose shall be subject to the sanction of the Secretary of State in Council, and shall not have force until it has been laid for thirty days before both Houses of Parliament.

*See notes to s. 94, Ilbert's Digest.*

For definitions of "India" and "British India" see s. 18 of the Interpretation Act, 1889 (52 & 53 Vict., c. 63).

This section does not authorize the appointment of natives of India to the covenanted civil services, but merely their appointment to offices, places or employments in the civil service of India.—*See* Despatch from Secretary of State, 8th March, 1883.

Persons who were appointed under this power up to 1889 were known as "Statutory Civilians". The system was changed in 1889 and since then these appointments are made from the members of the Provincial Service. For the history of these appointments, see *Ilbert*, pp. 150, 151.

"*Proved merit and ability.*"—*See* Home Dept. A Proceedings, March, 1875, Nos. 255—276.

The words "in British India" occurring after the word "born" in sub-section (1) were repealed by Schedule I to the Government of India (Amendment) Act, 1916, so as to widen the scope of the law: see Leg. Dep. u. o. No. 33 of 1915 (*Explanatory Note to Bill*), and No. 250 of 1915 (Proceedings No. 145).

"*Habitually resident*": The intention is to exclude persons who have acquired an Anglo-Indian domicile, but intend to return to Europe: Leg. Dep. u. o. No. 302 of 1899 (*Raleigh*, Minutes No. 4), also No. 229 of 1893 (*Miller*, Minutes No. 89) and No. 561 of 1897.

"*Foregoing provisions*" refers to s. 97, *ante*.

The expression "Native of India" which was used and defined in s. 6 of the Government of India Act, 1870, had, from time to time, given rise to difficulties of construction, it being doubtful whether the term "India" meant British India and whether the definition excluded subjects of Native States.—*See* Leg. Dep. u. o. No. 263 of 1914 and A Pros., March 1915, Nos. 23—31, Serial No. 45. To obviate these difficulties the expression is not used in this section and sub-section (1) reproduces the definition with the phraseology altered so as

to include all persons of Asiatic or European descent domiciled in British India and born of parents habitually resident in India.—See in this connection the Secretary of State's Despatch, Public, No. 199, dated 29th December, 1916, and Home Department circular letter No. 1080, dated 5th October, 1917, suggesting the desirability of avoiding in future the use of the term "statutory native of India".

Sub-section (1) would not seem to include subjects of Native States who are not domiciled in British India.

The whole section must, however, be taken to be governed by the provisions of s. 96 A., *ante*, under which any ruler or subject of a Native State may be declared eligible for any civil appointment to which a "Native of British India" may be appointed. No declaration has yet been made under s. 96 A., but should such a declaration be made the person named therein would be eligible for appointment under s. 99 in the same way as a "Native of British India".

"*Subject to such rules*": See the rules as to the appointment of Subordinate Judges to Assistant Sessions Judgeships: General Statutory Rules and Orders, vol. I. For the history of the Rules, see *Ilbert*, pp. 150, 151.

Sub-section (3) reproduces the provisions of the last part of s. 6 of the Statute of 1870. The meaning of the words "*define and limit the qualification*" is very obscure.—Leg. Dep. A. Pros., October, 1873, Nos. 69–71, and Home Dep. Public A. Pros., February, 1886, Nos. 129–149½.

Power to  
make pro-  
visional  
appointments  
in certain  
cases.

100. (1) Where it appears to the authority in India by whom an appointment is to be made to any office reserved to members of the Indian Civil Service, that a person not being a member of that service ought, under the special circumstances of the case, to be appointed thereto, the authority may appoint thereto any person who has resided for at least seven years in India, and who has, before his appointment, fulfilled all the tests (if any) which would be imposed in the like case on a member of that service.

[Indian Civil  
Service Act,  
1861, ss. 3,  
4.]

(2) Every such appointment shall be provisional only, and shall forthwith be reported to the Secretary of State, with the special reasons for making it; and unless the Secretary of State in Council approves the appointment, with the concurrence of a majority of votes at a meeting of the Council of India, and within twelve months from the date of the appointment intimates such approval to the authority by whom the appointment was made, the appointment shall be cancelled.

[This section is meant to cover exceptional and special appointments: Leg. Dep. u. o. No. 655 of 1907.]

"*Any office reserved to members of the Indian Civil Service*": see s. 98, *ante*.

This power should only be used in the case of appointments which would ordinarily be held by members of the Indian Civil Service: *Richards*, Minutes No. 48 (Leg. Dep. u. o. No. 650 of 1905).

An appointment under this section may be valid provisionally, although the terms of sub-section (2) have not been complied with: Leg. Dep. u. o. Nos. 702 of 1884, and 93 of 1886.

An appointment to "hold charge of" a reserved office must be made under this section: Leg. Dep. u. o. No. 642 of 1887.

Per *Illert* differing from *Harvey James*.—There is nothing in the section which limits it to the appointment of Europeans: Leg. Dep. u. o. No. 715 of 1886.

As to the appointment to the office of Accountant-General of a person who is not a member of the Indian Civil Service, see notes to the third Schedule, *post*.

As to the effect of sub-section (2), *i.e.*, whether the words "shall be cancelled" are simply a direction to the authority having power to cancel the appointment or whether they mean "shall *ipso facto* be cancelled", see Leg. Dep. u. o. No. 702 of 1884.

## PART IX.

### THE INDIAN HIGH COURTS.

#### *Constitution.*

[Indian High Courts Act, 1861, ss. 2, 16, 19; Indian High Courts Act, 1911, ss. 1, 3.] **101.** (1) The High Courts referred to in this Act are the High Courts of Judicature for the time being established in British India by Letters Patent.

Constitution of High Courts.

(2) Each High Court shall consist of a Chief Justice and as many other Judges as His Majesty may think fit to appoint: Provided as follows:—

- (i) the Governor-General in Council may appoint persons to act as Additional Judges of any High Court, for such period, not exceeding two years, as may be required; and the Judges so appointed shall, whilst so acting, have all the powers of a Judge of the High Court appointed by His Majesty under this Act;
- (ii) the maximum number of Judges of a High Court, including the Chief Justice and Additional Judges, shall be twenty.
- (3) A Judge of a High Court must be—
  - (a) a barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland, of not less than five years' standing; or
  - (b) a member of the Indian Civil Service of not less than ten years' standing, and having for at least three years served as, or exercised the powers of, a District Judge; or
  - (c) a person having held judicial office, not inferior to that of a Subordinate Judge or a Judge of a Small Cause Court, for a period of not less than five years; or



(d) a person having been a pleader of a High Court for a period of not less than ten years.

(4) Provided that not less than one-third of the Judges of a High Court, including the Chief Justice, but excluding Additional Judges, must be such barristers or advocates as aforesaid, and that not less than one-third must be members of the Indian Civil Service.

(5) The High Court for the North-Western Provinces may be styled the High Court of Judicature at Allahabad, and the High Court at Fort William in Bengal is in this Act referred to as the High Court at Calcutta.

*See notes to s. 96, Ilbert's Digest.*

There are now five chartered High Courts, *viz.*, the High Courts at Calcutta, Madras, Bombay, Allahabad and Patna. For the Letters Patent *see* the English Statutory Rules and Orders Revised.

The Letters Patent *inter alia* define the jurisdiction of the High Courts in civil, criminal, probate, matrimonial and admiralty matters and give an appeal to the Privy Council in certain cases. As to the procedure in appeals to the Privy Council, *see* ss. 109 to 112 of the Code of Civil Procedure, 1908, and rules made thereunder.

When an application for special leave to appeal to the Privy Council in a criminal case is pending, it is in the discretion of the Indian Executive to suspend the execution of the sentence or not, as it thinks fit: *Balmukund v. King-Emperor* (1915), L. R. 42, I. A. 133. As to the principle on which such leave will be granted, *see Vaithinatha Pillai v. King-Emperor* (1913), 40 I. A. 193, and *Clifford v. King-Emperor* (1913), 40 I. A. 241.

For definition of the expression "High Court" as used in Indian enactments, *see* s. 3 (24) of the General Clauses Act, 1897, as regards civil proceedings, and as regards criminal proceedings, *see* s. 4 (7) of the Code of Criminal Procedure, 1898.

*Sub-section (2) (i):*—Additional Judges are Judges within the meaning of some, if not all, of the sections of 24 & 25 Vict., c. 104 (1861). Thus the rules under section 6 of that Statute [corresponding to s. 104 (1), *post*] may be made applicable to them: Leg. Dep. u. o. No. 340 of 1914. The precedence of Additional Judges is not provided for by Statute, but they are apparently regarded by the Courts as ranking before Officiating Judges appointed under section 105, *post*; Leg. Dep. u. o. 409 of 1914. The Government of India can by one notification cancel an officiating appointment and convert it into an additional appointment under this section (Opinion of *Advocate-General*): Leg. Dep. u. o. No. 80 of 1913. It would, however, be a misapplication of the law to resort to this power of appointing an Additional Judge while a permanent vacancy remains unfilled: Leg. Dep. u. o. No. 409 of 1914.

*Sub-section (3) : clause (a) :* By "barrister" is meant practising barrister.—*See* Leg. Dep. B Pros., March, 1880, No. 13. This opinion has been doubted (Leg. Dep. u. o. Nos. 106 and 164 of 1898, and 52 of 1899) but is followed in practice.

*Clause (b) :* "*Served as, or exercised the powers of, a District Judge*": The expression "District Judge" is used instead of the old expression "Zila Judge". For a discussion of the meaning of the whole phrase, *see* Leg. Dep. u. o. No. 1681 of 1878.

For rulings, see the following—

(a) Service held to count:—

As Judicial Commissioner: Leg. Dep. B Pros., March, 1874, Nos. 11—12.

As Assistant Sessions Judge: Leg. Dep. u. o. No. 637 of 1884.

(b) Service held not to count—

As a Zila Judge on a Committee: Leg. Dep. B Pros., June, 1881, No. 31.

As a Legal Remembrancer: Leg. Dep. u. o. No. 637 of 1884.

See also Leg. Dep. B Pros., October, 1880, Nos. 15—16, and u. o. Nos. 322 of 1904 and 555 of 1907.

"For at least three years." These words qualify service as well as powers—see Despatch from Secretary of State, 7th December, 1862. The Secretary of State has ruled that the following should count towards three years, *viz.*, time spent (1) on duty (2) in transit, if the officer holds during transit the substantive rank of District and Sessions Judge: Leg. Dep. u. o. No. 714 of 1897.

Clause (c): "*Person*." Query: does this include members of the Indian Civil Service? The Secretary of State has ruled on more than one occasion that it should not be so interpreted: Despatch from Secretary of State of 24th July, 1863, and Leg. Dep. u. o. Nos. 637 of 1884 and 71 of 1885; see also Leg. Dep. B Pros., October, 1880, Nos. 15 and 16.

Clause (d): "*Pleader*." Sir A. Scoble held that "*pleader*" means vakil and that advocates can only qualify as barristers: Minutes No. 3 (Leg. Dep. u. o. No. 681 of 1883). But this was overruled by the *Law Officers of the Crown*, who held that an advocate who is not a barrister is a pleader within the meaning of the Statute: Home Dep. Judicial Pros., January, 1890, Nos. 89 and 91.

As to the procedure to be followed by the Local Government in connection with, and the position of, such Government in regard to appointments of permanent, Additional and Officiating Judges, see Leg. Dep. u. o. No. 136 of 1916, *re* the Patna High Court.

[Indian High Courts Act, 1861, ss. 4, 16; Govt. of India Act, 1912, s. 1 (1), prov. (a).] 102. (1) Every Judge of a High Court shall hold his office during His Majesty's pleasure. (2) Any such Judge may resign his office, in the case of the High Court at Calcutta, to the Governor-General in Council, and in other cases to the Local Government. Tenure of office of Judges of High Courts.

See note to s. 97, *Ilbert's Digest*.

Judges of the Supreme Court in England hold office "during good behaviour". Colonial Judges like High Court Judges in India hold "during pleasure".

[Indian High Courts Act, 1861, s. 5.] 103. (1) The Chief Justice of a High Court shall have rank and precedence before the other Judges of the same Court. Precedence of Judges of High Courts.

(2) All the other Judges of a High Court shall have rank and precedence according to the seniority of their appointments, unless otherwise provided in their patents.

As to the precedence of Additional and Acting Judges, see note to sub-section (2) of s. 101, *ante*. The word "Judge" here probably in-

cludes Additional and Acting Judges. — See Serial No. 49 in Leg. Dep. A Pros., March, 1915, Nos. 23—31.

“*In their patents.*” It has been held that Letters Patent are not necessary to constitute an appointment to a Judgeship of a High Court; Leg. Dep. u. o. No. 3212 of 1881. [For an argument, *contra*, however, see *Queen-Empress v. Ganga Kum* (1894), 1. L. R. 16 All., at p. 137.]

Salaries, &c., of Judges of High Courts. 104. (1) The Secretary of State in Council may fix the salaries, allowances, furloughs, retiring pensions and (where necessary) expenses for equipment and voyage, of the Chief Justices and other Judges of the several High Courts, and may alter them, but any such alteration shall not affect the salary of any Judge appointed before the date thereof.

[East India Act, 1797, s. 2; Govt. of India Act, 1800, s. 9. Indian Salaries and Pensions Act 1825, s. 4; Indian High Courts Act, 1861, s. 6.]

(2) The remuneration fixed for a Judge under this section shall commence on his taking upon himself the execution of his office, and shall be the whole profit or advantage which he shall enjoy from his office during his continuance therein.

[Govt. of India Act, 1800, s. 7; East India Company Act, 1813,

(3) If a Judge of a High Court dies during his voyage to India, or within six months after his arrival there for the purpose of taking upon himself the execution of his office, the Secretary of State shall pay to his legal personal representatives, out of the revenues of India, such a sum of money as will, with the amount received by, or due to, him at the time of his death on account of salary, make up the amount of one year's salary.

s. 89; Indian Bishops and Courts Act, 1823, s. 11; Indian Salaries and Pensions Act 1825, s. 5; Indian High Courts Act, 1861, s. 11.]

(4) If a Judge of a High Court dies while in possession of his office, and after the expiration of six months from his arrival in India for the purpose of taking upon himself the execution of his office, the Secretary of State shall pay to his legal personal representatives, out of the revenues of India, over and above the sum due to him at the time of his death, a sum equal to six months' salary.

For salaries paid to High Court Judges, see *Ilbert*, p. 253.

The rules which have been made under this section as to the privilege and other leave of High Court Judges will be found in the Civil Service Regulations, Chapter XXIII. As to their validity see Finance Dep. Pros., September, 1884, Nos. 113—115: Despatch to Secretary of State (Finance), No. 203, 12th September, 1884; Despatch from Secretary of State (Judicial), No. 32, 4th December, 1884. See also Home Dep. Judicial Pros., June, 1885, Nos. 203 and 204.

Rules made under this section apply to Additional Judges and the term “Judge” in those rules includes such Judges: Leg. Dep. u. o. No. 340 of 1914.

As to the construction of the proviso contained in the last part of sub-section (1), see Leg. Dep. u. o. No. 3170 of 1881.

For a discussion on the provisions here re-enacted, see Serial No. 50 in Leg. Dep. A Pros., March, 1915, Nos. 23—31.

[Indian High Courts Act, 1861, s. 7 ; Govt. of India Act, 1912, s. 1(1), prov. (a).] **105.** (1) On the occurrence of a vacancy in the office of Chief Justice of a High Court, and during any absence of such a Chief Justice, the Governor-General in Council, in the case of the High Court at Calcutta, and the Local Government in other cases, shall appoint one of the other Judges of the same High Court to perform the duties of Chief Justice of the Court until some person has been appointed by His Majesty to the office of Chief Justice of the Court, and has entered on the discharge of the duties of that office, or until the Chief Justice has returned from his absence, as the case requires.

Provision for vacancy in the office of Chief Justice or other Judge.

(2) On the occurrence of a vacancy in the office of any other Judge of a High Court, and during any absence of any such Judge, or on the appointment of any such Judge to act as Chief Justice, the Governor-General in Council, in the case of the High Court at Calcutta, and the Local Government in other cases, may appoint a person, with such qualifications as are required in persons to be appointed to the High Court, to act as a Judge of the Court; and the person so appointed may sit and perform the duties of a Judge of the Court until some person has been appointed by His Majesty to the office of Judge of the Court, and has entered on the discharge of the duties of the office, or until the absent Judge has returned from his absence, or until the Governor-General in Council or the Local Government, as the case may be, sees cause to cancel the appointment of the Acting Judge.

*See notes to s. 100, Ilbert's Digest.*

Although the Chief Justice must be a barrister [see s. 101 (4) *ante*], yet the person appointed under this section to perform the duties of Chief Justice is not required to be a barrister.—*See* Home Dep. Pros., July, 1882, Nos. 354—356 (appointment) of Mr. Justice Romesh Chunder Mitter to officiate for Sir R. Garth, C. J.)

Sub-section (1) is imperative and requires an acting appointment to be made whenever the office of Chief Justice is vacant: Leg. Dep. u. o. No. 405 of 1887. It has thus been held that a Chief Justice cannot be granted casual leave without a substitute being appointed; u. o. No. 677 of 1904. On the other hand, a short vacancy occurring by reason of the resignation of the Chief Justice during vacation was not filled: u. o. No. 747 of 1896.

“On the occurrence of a vacancy.” These words take the place of the words “upon the happening of a vacancy” used in s. 7 of the Indian High Courts Act, 1861, which this section re-enacts and which gave rise to considerable difficulty of construction. The section was considered by the *Law Officers of the Crown* in Mr. Justice Burkitt's case: Leg. Dep. u. o. No 531 of 1895. They held:—

(a) that the power to make an officiating appointment continues so long as the vacancy lasts. This was affirmed by the

Privy Council in *Rao Balwant Singh v. Rani Kishori* (1898), L. R. 25, I. A., page 77 ;

(b) that appointments under the section should not be expressed for a specified period; *see also* Leg. Dep. u. o. No. 879 of 1887; *cf.* No. 202 of 1905 ;

(c) that the power once exercised is exhausted : *see also* opinion of Advocate-General to the same effect : Home Dep. Judicial Confidential Pros., May, 1907, No. 6.

As to (c) above the question is whether the application of s. 32 (1) of the Interpretation Act, 1889 (52 and 53 Vict., c. 63), which provides in effect that powers conferred by an Act may be exercised as often as occasion requires unless a contrary intention appears, has not altered the position. *Sir G. Lowndes* (Law Member) was of opinion that, though there is some doubt as to whether the words "on the occurrence of a vacancy" do not show a contrary intention, the sounder interpretation is that those words merely mark the coming into existence of the power of appointment and that having come into existence it can, under s. 32 (1) of the Interpretation Act, be exercised as often as occasion requires, *e.g.*, when either an Acting Chief Justice or an Acting Judge dies before the substantive appointment is filled. He was also of opinion that a Judge appointed "to perform the duties of Chief Justice" is not a "Chief Justice", nor is a person appointed to act as a Judge a "Judge" within the meaning of this section. Leg. Dep. u. o. No. 870 of 1916.

As to appointments "till further orders" *see* Leg. Dep. u. o. Nos. 429 of 1898, 37 of 1907, 32 of 1908.

An officiating appointment should not be made in a permanent vacancy unless it is intended to move the Crown to fill the permanent appointment. *Miller*, Minutes No. 65 (Leg. Dep. u. o. No. 817 of 1893).

The Government of India can by one notification cancel an officiating appointment and turn it into a temporary additional appointment under s. 101 (2) (i), *ante*. Leg. Dep. u. o. No. 80 of 1913 (Opinion of Advocate-General).

It is doubtful whether an appointment which would have the effect of increasing the number of Judges beyond the normal strength of the Court can be properly described as filling a vacancy, or can be lawfully made by the Governor-General in Council under this section.—*See* Home Dep. Proceedings, June, 1883, Nos. 15—17; Leg. Dep. u. o. No. 547 of 1883; Despatch to Secretary of State (Judicial) No. 39, 29th October 1883; Despatch from Secretary of State, No. 33 (Judicial), 13th December, 1883; *see also* Leg. Dep. u. o. No. 3416 of 1882.

"Such qualifications as are required in persons to be appointed to the High Court": The Secretary of State was advised that these words do not import the provisions re-enacted in s. 101 (4), *ante*, *i.e.*, that the statutory proportion of barristers and civilians need not be observed in the case of officiating appointments: Leg. Dep. u. o. No. 52 of 1899. *Sir A. Scoble*, however, had previously laid down the proposition that the law was so doubtful that the proportion should be observed as far as possible (Minutes No. 82: Leg. Dep. u. o. No. 244 of 1889) and this appears to be the course followed in practice.

### *Jurisdiction.*

Jurisdiction  
of High  
Courts.

106. (1) The several High Courts are Courts of Record and have such jurisdiction, original and appellate, including Admiralty jurisdiction in respect of offences committed on the high seas, and all such powers and authority over or in

[East India  
Company  
Act, 1772,  
ss. 13, 14 ;

East India Company Act, 1780, ss. 8, 17; East India Company Act, 1793, s. 156; East India Act, 1797, ss. 11, 13; Govt. of India Act, 1800, ss. 2, 5, 20; Indian Bishops and Courts Act, 1823, ss. 7, 17; Indian High Courts Act, 1861, ss. 9, 11, 16.] relation to the administration of justice, including power to appoint clerks and other ministerial officers of the Court, and power to make rules for regulating the practice of the Court, as are vested in them by Letters Patent and, subject to the provisions of any such Letters Patent, all such jurisdiction, powers and authority as are vested in those Courts, respectively, at the commencement of this Act.

[(1a) The Letters Patent establishing, or vesting jurisdiction, powers or authority in a High Court may be amended from time to time, by His Majesty by further Letters Patent.]

(2) The High Courts have not, and may not exercise, any original jurisdiction in any matter concerning the revenue, or concerning any act ordered or done in the collection thereof according to the usage and practice of the country or the law for the time being in force.

For a history of the statutory enactments with respect to the jurisdiction of the High Courts, including jurisdiction in respect of offences committed at sea, see notes to s. 101, *Ilbert's Digest*.

As to Letters Patents see s. 101, *ante*, and notes thereunder.

The High Courts at Calcutta, Madras and Bombay have been constituted Prize Courts for the purposes of the present war.—*See the British Manual of Emergency Legislation*, supplement No. 4, p. 391 (1915).

Certain Courts outside India are under Orders in Council, subject to the jurisdiction of Indian High Courts. Thus under the Muscat Order i. Council of 4th November, 1867, an appeal lies from the Consular Court of Muscat to the Bombay High Court; under the Persian Coast and Islands Order in Council of 7th May, 1907, there is also an appeal to Bombay High Court; and under the Zanzibar Order in Council, 1906, offenders may be sent for trial to Bombay.—*See Statutory Rules and Orders*, 1904, 1907, and 1906, respectively.

Under s. 129, *post*, a High Court has power to send persons convicted by it of an offence under this Act, to Great Britain. As to removal of European lunatics and prisoners to the United Kingdom, see the Lunatics Removal (India) Act, 1851 (14 & 15 Vict. c. 81), and the Colonial Prisoners Removal Act, 1884 (47 & 48 Vict. c. 31)—see also Leg. Dep. u. o. No. 198 of 1916.

Sub-section (1a) was inserted by the Government of India (Amendment) Act, 1916, Sch. I, so as to give a standing power of amending the letters patent as and when it may be required: *See* Leg. Dep. U. O. No. 33 of 1916 (*Explanatory Note to Bill*); and Leg. Dep. A Pros., March, 1916, Nos. 23–31, Serial No. 52, and Enclosure No. 4 to Bill.

Sub-section (2) reproduces the provisions of s. 8 of the East India Company Act, 1780, with the modification that it is made applicable only to “original” jurisdiction: *See* Leg. Dep. A Pros., March, 1915, Nos. 23–31 (Serial No. 53 and Notes on clauses of Bill). Section 8 was probably suggested by the “Patna Case,” as to which see *Ilbert*, pp. 54, 55, and note (c) on p. 273. The history and nature of the jurisdiction exerciseable in revenue matters by the Supreme and High Courts under their Acts and Charters is fully discussed in a case before the Madras High Court—*Collector of Sea Customs v. Panniar Chithambaram* (1876), I. L. R. 1, Mad. 89. *See*

also *in re Audhar Chandra Shaw* (1873), 11 Beng. L. R. 250 (Calcutta) and *Spencer v. Juddow* (1850), 4 Moore I. A., 323 (Bombay); also the Calcutta and Madras City Land Revenue Acts, XXIII of 1850, and XII of 1851.

As to further exemptions from jurisdiction of High Courts, *see* ss. 110 and 111, *post*.

Powers of  
High Court  
with respect  
to subordi-  
nate Courts.

107. Each of the High Courts has superintendence over all Courts for the time being subject to its appellate jurisdiction, and may do any of the following things, that is to say,—

- (a) call for returns;
- (b) direct the transfer of any suit or appeal from any such Court to any other Court of equal or superior jurisdiction;
- (c) make and issue general rules and prescribe forms for regulating the practice and proceedings of such Courts;
- (d) prescribe forms in which books, entries and accounts shall be kept by the officers of any such Courts; and
- (e) settle tables of fees to be allowed to the sheriff, attorneys and all clerks and officers of Courts:

[Indian High Courts Act, 1861, ss. 15, 16; Govt. of India Act, 1912, s. 1 (1), prov. (a).]

Provided that such rules, forms and tables, shall not be inconsistent with the provisions of any [law] for the time being in force, and shall require the previous approval, in the case of the High Court at Calcutta, of the Governor General in Council, and in other cases of the Local Government.

In this connection, *see* *Ilbert*, pp. 153 and 163—165.

As to the question whether the Indian Legislature has power to constitute Courts within the jurisdiction of a High Court but withdrawn from its supervision and appellate jurisdiction, *see* Leg. Dep. u. o. No. 199 of 1913.

The word “law” in the proviso was substituted for the word “Act” by the Government of India (Amendment) Act, 1916, Schedule I, so as to include enactments of the Indian Legislature, which was probably the intention of s. 15 of the Indian High Courts Act, 1861, where the word “law” occurred.—*See* judgment of Collins, C. J., in *Rajam Chetty V. Seshayya* (1895), 1. L. R., 18 Mad., p. 236, and *Explanatory Note* to Bill in Leg. Dep. u. o. No. 33 of 1916.

The words “previous approval” in the proviso are used instead of the word “sanction” which occurred in s. 15 of the Act of 1861. As to the manner in which such sanction is exercised, *see* Leg. Dep. u. o. Nos. 269 of 1897, 319 and 320 of 1904.

Exercise of  
jurisdiction  
by single  
Judges or  
Division  
Courts.

108. (1) Each High Court may, by its own rules, provide as it thinks fit, for the exercise, by one or more Judges, or by Division Courts constituted by two or more Judges, of the High Court, of the original and appellate jurisdiction vested in the Court.

[Indian High Courts Act, 1861, ss. 13, 14, 16.]

(2) The Chief Justice of each High Court shall determine what Judge in each case is to sit alone, and what Judges of the Court, whether with or without the Chief Justice, are to constitute the several Division Courts.

[Indian High Courts Act, 1865, s. 3.] 109. (1) The Governor-General in Council may, by order, transfer any territory or place from the jurisdiction of one to the jurisdiction of any other of the High Courts, and authorize any High Court to exercise all, or any portion of, its jurisdiction in any part of British India not included within the limits for which the High Court was established, and also to exercise any such jurisdiction in respect of British subject for the time being within any part of India outside British India.

[Indian High Courts Act, 1865, s. 4.] (2) The Governor-General in Council shall transmit to the Secretary of State an authentic copy of every order made under this section.

(3) His Majesty may signify, through the Secretary of State in Council, his disallowance of any such order, and such disallowance shall make void and annul the order as from the day on which the Governor-General notifies that he has received intimation of the disallowance, but no act done by any High Court before such notification shall be deemed invalid by reason only of such disallowance.

For a discussion on the interpretation of the provisions here re-enacted, see *Maine's Minutes*, No. 45 (1866).

Doubts have been expressed as to whether the Governor-General in Council had power under s. 3 of the Indian High Courts, 1865 (28 & 29 Vict., c. 15), to authorize a High Court to exercise jurisdiction over territory which had not been transferred to its jurisdiction under the first part of the section (*see note to s. 104, Albert's Digest*). It has, however, been held more than once that such an extension of jurisdiction is valid under s. 3. Thus, in 1887 it was proposed to extend the jurisdiction of the Allahabad High Court to Oudh: Leg. Dep. u. o. No. 259 of 1887. The jurisdiction of the Madras High Court was extended to the *talukas* of Nugur, Albaka and Cherla which were transferred from the Central Provinces: Leg. Dep. u. o. No. 957 of 1904. In 1905 Sambalpur was included within the jurisdiction of the Calcutta High Court.—*See* Leg. Dep. u. o. No. 512 of 1905 and the notification on p. 69, General Statutory Rules and Orders, volume I, which was discussed and held to be *intra vires* in *Baleshwar Bagarti v. Bhagurathi Dass* (1908), 1. L. R., 35 Cal., 701. In 1912 the jurisdiction of the Madras High Court was extended to the Laccadive Islands and Minicoy.—*See* notification on p. 70, vol. I, *ibid.*

As to power of the Indian Legislature to remove territory from the jurisdiction of a Chartered High Court, *see notes to s. 6f, ante*.

As to the power of the Indian Legislature to constitute within the jurisdiction of a High Court any tribunal withdrawn from its supervision and appellate jurisdiction, *see* Leg. Dep. u. o. No. 199 of 1913.

The words "*any British subject for the time being within*" were substituted for the words "Christian subjects of His Majesty resident in" by the Government of India (Amendment) Act, 1916, Sch. I. The



words "Christian subjects" which occurred in s. 3 of the Indian High Courts Act, 1865, have given rise to difficulties in the past (*See* Leg. Dep. n. o. Nos. 210, 231, 273 of 1914) and were therefore replaced by the term "British subjects": *see Memorandum to Bill in Leg. Dep. Pros.*, April, 1915, Nos. 41—47.

Exemption  
from juris-  
diction of  
High Court.

110. (1) The Governor-General, each Governor [East India Company Act, 1772, ss. 15, 17; East India Company Act, 1780, s. 1; East India Act, 1797, s. 11, 1st and 2nd provisos; Govt. of India Act, 1800, ss. 2, 3; Indian Bishops and Courts Act, 1823, s. 7; Indian High Courts Act, 1861, ss. 11, 16; Govt. of India Act, 1912, s. 1 (1).] [Lieutenant-Governor and Chief Commissioner] and each of the members of [the Executive Council of the Governor-General or of a Governor or Lieutenant-Governor], shall not—

- (a) be subject to the original jurisdiction of any High Court by reason of anything counselled, ordered or done by any of them in his public capacity only; nor
- (b) be liable to be arrested or imprisoned in any suit or proceeding in any High Court acting in the exercise of its original jurisdiction; nor
- (c) be subject to the original criminal jurisdiction of any High Court in respect of any offence not being treason or felony.

(2) The exemption under this section from liability to arrest and imprisonment shall extend also to the Chief Justices and other Judges of the several High Courts.

*See note to s. 105, Ilbert's Digest, and judgment of Tyabji J. in Jehangir v. Secretary of State for India (1903) I. L. R. 27 Bom. 189. See also* Mayne's Criminal Law of India, Ed. 4, Pt. II, p. 94.

The exemption granted by this section are confined to High Courts established by Letters Patent—*cf.* s. 101 (1), *ante*. Other Courts in British India may be dealt with by Indian legislation.

The first set of words in square brackets were inserted by the Government of India (Amendment) Act, 1916, and the second was substituted for certain existing words as a consequential amendment.

Written  
order by  
Governor-  
General  
in Council a  
justification  
for act in  
High Court.

111. The order in writing of the Governor-General in [East India Company Act, 1780, ss. 2, 3, 4; Indian High Courts Act, 1861, ss. 11, 16.] Council for any act shall, in any proceeding, civil or criminal in any High Court acting in the exercise of its original jurisdiction, be a full justification of the act, except so far as the order extends to any European British subject; but nothing in this section shall exempt the Governor-General, or any member of his Executive Council or any person acting under their orders, from any proceedings in respect of any such act before any competent Court in England.

*See note to s. 106, Ilbert's Digest.*

The expression "*European British subject*" has here been substituted for the expression "*British subject*" in order to give effect to the real intention of s. 3 of the East India Company Act, 1780. The former expression is defined in s. 3 (2) of the Code of Criminal Procedure, 1898.

As to proceedings before Courts in England *see* ss. 127 and 129, *post*.

*Law to be administered.*

[East India Company Act, 1780, s. 17, prov.; East India Act, 1797 s. 18; Govt. of India Act, 1890, s. 2; Indian Bishops and Courts Act, 1823, s. 7; Indian High Courts Act, 1861, s. 11.]

112. The High Courts at Calcutta, Madras and Bombay, Law to be administered in the exercise of their original jurisdiction in suits against inhabitants of Calcutta, Madras or Bombay, as the case may be, shall, in matters of inheritance and succession to lands, rents and goods, and in matters of contract and dealing between party and party, when both parties are subject to the same personal law or custom having the force of law, decide according to that personal law or custom, and when the parties are subject to different personal laws or customs having the force of law, decide according to the law or custom to which the defendant is subject.

The introduction of English law as the law to be administered by the Supreme Courts in India necessitated the provisions which have been re-enacted by this section. Those provisions have been modified by Indian Legislation, *e.g.*, the Indian Succession Act, 1865 (X of 1865), the Indian Contract Act, 1872 (IV of 1872).—See notes to s. 108, *Ilbert's Digest*. Cf. section 5 of the Central Provinces Laws Act, 1875 (XX of 1875).

In this connection it may be noted that both s. 18 of the East India Company Act, 1780, and s. 12 of the East India Act, 1797, have been excluded from repeal in Sch. IV to the present Statute. Both these sections were enacted to preserve the rights and authorities of fathers and masters of families but they have been to some extent modified or superseded by Indian legislation, *e.g.*, the laws relating to slavery, *suttee* and female infanticide, and the Indian Penal Code which admits of no exception on these grounds. They have been treated as spent in *Ilbert's Digest* and were originally so treated in the Consolidation Bill, 1914 (Leg. Dep. u. o. No. 250 of 1915) though they were excluded from repeal in Sch. IV of the Bill as passed. The provisions of these two sections might probably be relied on as saving Hindu or Mahomedan law relating to plurality of wives and as interpreting s. 494 of the Indian Penal Code.

*Additional High Courts.*

[Indian High Courts Act, 1861, s. 16; Indian High Courts Act, 1911, s. 2.]

113. His Majesty may, if he sees fit, by Letters Patent, establish a High Court of Judicature in any territory in British India, whether or not included within the limits of the local jurisdiction of another High Court, and confer on any High Court so established any such jurisdiction, powers and authority as are vested in, or may be conferred on, any High Court existing at the commencement of this Act; and, where a High Court is so established in any area included within the limits of the local jurisdiction of another High Court, His Majesty may, by Letters Patent, alter those limits, and make such incidental, consequential and supplemental provisions as may appear to be necessary by reason of the alteration.

It was under this section that the High Court of Judicature at Patna was established for Bihar and Orissa by Letters Patent, dated 9th February 1916.

A High Court of Judicature for the North-Western Provinces (now the High Court at Allahabad) was established by Letters Patent, dated 17th March, 1886. *Ilbert* considers (*see Digest, Table of Comparison*) that the power conferred by s. 16 of the Indian High Courts Act, 1861, was thus exhausted, and was revived by s. 2 of the Indian High Courts Act, 1911.

As to when Letters Patent take effect, *see* the Colonial Letters Patent Act, 1863 (26 & 27 Vict., c. 76).

### *Advocate-General.*

Appointment and powers of Advocate-General. 114. (1) His Majesty may, by warrant under His Royal Sign Manual, appoint an Advocate-General for each of the presidencies of Bengal, Madras and Bombay. [Govt. of India Act, 1858, s. 29.]

(2) The Advocate-General for each of those presidencies may take on behalf of His Majesty such proceeding as may be taken by His Majesty's Attorney-General in England. [East India Company Act, 1813, s. 111, Indian High Courts Act, 1861, s. 11.]

(3) On the occurrence of a vacancy in the office of Advocate-General, or during any absence or deputation of an Advocate-General, the Governor-General in Council in the case of Bengal, and the Local Government in other cases, may appoint a person to act as Advocate-General; and the person so appointed may exercise the powers of an Advocate-General until some person has been appointed by His Majesty to the office and has entered on the discharge of his duties, or until the Advocate-General has returned from his absence or deputation, as the case may be, or until the Governor-General in Council or the Local Government, as the case may be, cancels the acting appointment.]

*See* note to s. 109, *Ilbert's Digest*.

As to the use in this section of the words "*for each of the presidencies*" for the words "*at any of the said presidencies*" which occurred in s. 111 of the East India Company Act, 1813, *see Serial No. 58 (clause 111)* in A. Pro., March, 1915, Nos. 23—31, and Part II of *Explanatory Note* to Bill in Leg. Dep. u. o. No. 33 of 1916.

Sub-section (3) was inserted by Sch. I to the Government of India (Amendment) Act, 1916, so as to permit of *acting* Advocates-General being appointed in India. Under sub-section (1) an Advocate-General must be appointed by the Crown.

## PART X.

### ECCLIESIASTICAL ESTABLISHMENT.

Jurisdiction of Indian Bishops. 115. (1) The Bishops of Calcutta, Madras and Bombay have, and may exercise within their respective dioceses, such episcopal functions, and such ecclesiastical jurisdiction for the superintendence and good government of the ministers of the Church of England therein, as His Majesty may, by Letters Patent, direct. [East India Company Act, 1813, ss. 51, 52; Govt. of India Act, 1833, ss. 93, 94.]

(2) The Bishop of Calcutta is the Metropolitan Bishop in India, subject nevertheless to the general superintendence and revision of the Archbishop of Canterbury.

(3) Each of the Bishops of Madras and Bombay is subject to the Bishop of Calcutta as such Metropolitan, and must at the time of his appointment to his Bishopric, or at the time of his consecration as Bishop, take an oath of obedience to the Bishop of Calcutta, in such manner as His Majesty, by Letters Patent, may be pleased to direct.

(4) His Majesty may, by Letters Patent, vary the limits of the dioceses of Calcutta, Madras and Bombay.

[Colonial  
Clergy Act,  
1874, s. 13.]

(5) Nothing in this Act or in any such Letters Patent as aforesaid shall prevent any person who is, or has been, Bishop of any diocese in India from performing episcopal functions, not extending to the exercise of jurisdiction, in any diocese or reputed diocese at the request of the Bishop thereof.

*See notes to s. 110, Ilbert's Digest.*

With reference to a proposal to accord to the Metropolitan in India the title of Archbishop, it was held that no Letters Patent could be issued without Parliamentary legislation which did not recognize the authority of the Archbishop of Canterbury over any Archbishop appointed for India.—Leg. Dep. u. o. No. 303 of 1913.

This section relates only to the Bishops of Calcutta, Madras and Bombay but does not bar the power of the Crown to appoint non-statutory Bishops: Leg. Dep. u. o. Nos. 344 and 503 of 1887 (Chota Nagpur), 377 of 1889 (Lucknow), 216, 229 and 249 of 1896 (Tinnevely and Madura). Bishops have been appointed also for Lahore, Nagpur, Rangoon and Travancore

There is strictly no "Lord Bishop" in India except the Bishop of Calcutta; the Bishops of Madras and Bombay and the non-statutory Bishops may be addressed as "Lord Bishop" in ordinary correspondence, but in notifications and documents requiring precision should be referred to as Bishop: Leg. Dep. u. o. No. 352 of 1903.

As to the consecration by Indian Bishops of non-statutory Bishops see *Richards, Minutes* No. 31, Home Dep. Ecclesiastical A Pros. August, 1905 (Confidential), Nos. 50 and 51.

As to the words "oath of obedience" in sub-section (3), see note (b) to s. 110, *Ilbert's Digest*.

For a discussion on the law as to the jurisdiction of Bishops in India (Opinion of the *Law Officers of the Crown*), see *Scoble's Minutes*, No. 25 (1887); Leg. Dep. u. o. Nos. 344 and 503 of 1887.

As to the exercise of certain episcopal functions in England or Ireland by the Bishops of Calcutta, Madras and Bombay, see the Colonial Bishops Act, 1852 (15 & 16 Vict., c. 52).

Territory, outside any diocese in British India, over which one Bishop has been exercising episcopal functions may be transferred to another Bishop by mutual arrangement, the Government of India having no statutory powers in the matter: Leg. Dep. u. o. No. 310 of 1911.

[Indian  
Bishops and  
Courts Act,  
1823, s. 6.]

116. [Power to admit to holy orders]. Repealed by the Government of India (Amendment) Act, 1916, Second Schedule.

*Sec s. 111, Ilbert's Digest and notes thereunder.*

This section was repealed as being unnecessary: Serial No. 60 (clause 119) in A Pros., March 1915, Nos. 23—31.

Consecration  
of person  
resident in  
India ap-  
pointed to  
Bishopric.

117. If any person under the degree of Bishop is appointed to the Bishopric of Calcutta, Madras or Bombay, being at the time of his appointment resident in India, the Archbishop of Canterbury, if so required to do by His Majesty by Letters Patent, may issue a commission under his hand and seal, directed to the two remaining Bishops, authorizing and charging them to perform all requisite ceremonies for the consecration of the person so to be appointed.

This section relates to the consecration by Indian Bishops of a person appointed as Bishop of Calcutta, Madras or Bombay. As to the consecration by Indian Bishops of Bishops for Native States and other non-statutory Bishops, see *Richards Minutes*, No. 31 (1905); Home Dep. Ecclesiastical A Pros., August, 1905 (Confidential), Nos. 50 and 51.

Salaries and  
allowances of  
Bishops and  
Archdeacons.

118. (1) The Bishops and Archdeacons of Calcutta, Madras and Bombay are appointed by His Majesty by Letters Patent, and there may be paid to them, or to any of them, out of the revenues of India, such salaries and allowances as may be fixed by the Secretary of State in Council; but any power of alteration under this enactment shall not be exercised so as to impose any additional charge on the revenues of India.

[East India Company Act, 1813, s. 49; Govt. of India Act, 1833, ss. 89, 101; Indian Bishops Act, 1842, ss. 1, 3, 4; Indian Bishops Act, 1871, s. 1, prov.; Indian Salaries and Allowances Act, 1880, ss. 2, 3, 4, Sch. I.]

(2) The remuneration fixed for a Bishop or Archdeacon under this section shall commence on his taking upon himself the execution of his office, and be the whole profit or advantage which he shall enjoy from his office during his continuance therein, and continue so long as he exercises the functions of his office.

[East India Company Act, 1813, s. 50; Govt. of India Act, 1833, s. 90.]

(3) There shall be paid out of the revenues of India the expenses of visitations of the said Bishops, but no greater sum may be issued on account of those expenses than is allowed by the Secretary of State in Council.

[Indian Bishops and Courts Act, 1823, s. 5; Govt. of India Act, 1833, s. 100.]

*See notes to s. 113, Ilbert's Digest.*

In practice the appointments of Archdeacons are made by the Bishops of Calcutta, Madras and Bombay, respectively, under the

authority of their respective Letters Patent dated 2nd May, 1814, 13th June, 1835, and 1st October, 1836, which conferred on them and their successors the right of collating a priest to the office of Archdeacon.

As to the jurisdiction of Archdeacons, see *Scoble's Minutes*, No. 37 (1888).

The question as to how far Parliamentary legislation is necessary to effect a revision of leave and pension rules, to meet the case of a non-statutory Bishop who is appointed Bishop of Calcutta, Madras or Bombay, was discussed in the case of Dr. Lefroy who was appointed Bishop of Calcutta. The Secretary of State held that pensions are not affected by the provisions as to "allowances":—u. o. 141 of 1913 and B. Pros., August, 1914, No. 51.

Sub-section (2) may be interpreted as limiting ecclesiastical emoluments only, and not excluding such allowances as house allowance, provided the maximum laid down by s. 118 is not exceeded: Leg. Dept. u. o. No. 836 of 1904. So also office rent: u. o. No. 193 of 1907. But the section excludes exchange compensation allowance, which is an addition to salary: u. o. Nos. 819 of 1893 and 167 of 1894.

The Bishop of Bombay is not entitled to salary for time spent in Ceylon: Leg. Dep. u. o. No. 393 of 1893. The Bishop of Calcutta as "Metropolitan in India and the Island of Ceylon" is entitled to visit or reside in Ceylon: u. o. No. 296 of 1911, see also *Serial No. 60* in A. Progs., March, 1915, Nos. 23—31.

As to the pension of Archdeacons, see *Stokes Minutes*, No. 32 (1880). The provision in s. 5 of the Indian Bishops and Courts Act, 1823 (4 Geo. 4, c. 71) as to a house for the Bishop of Calcutta is exhausted and has not been re-enacted. *Ilbert* suggests that the provision may have been construed as including an obligation to maintain his house: see note (e) to s. 113, *Digest*.

[Indian Salaries and Pensions Act, 1825, s. 5; Govt. of India Act, 1838, s. 97.]

119. (1) If the Bishop of Calcutta dies during his voyage to India for the purpose of taking upon himself the execution of his office, or if the Bishop of Calcutta, Madras or Bombay dies within six months after his arrival there for that purpose, the Secretary of State shall pay to his legal personal representatives, out of the revenues of India, such a sum of money as will, with the amount received by, or due, to him at the time of his death on account of salary, make up the amount of one year's salary. Payments to representatives of Bishop.

(2) If the Bishop of Calcutta, Madras or Bombay dies while in possession of his office, and after the expiration of six months from his arrival in India, for the purpose of taking upon himself the execution of his office, the Secretary of State shall pay to his legal personal representatives, out of the revenues of India, over and above the sum due to him at the time of his death, a sum equal to six months' salary.

Compare this section with s. 104 (3), (4), *ante*, containing similar provisions for Judges of High Courts.

[Indian Bishops and Courts Act, 1823, s. 3; Indian Salaries and

120. His Majesty may, by warrant under the Royal Pensions to Sign Manual, countersigned by the [Secretary of State] Bishops. grant, out of the revenues of India, to any Bishop of Calcutta a pension not exceeding fifteen hundred pounds per annum if he has resided in India as Bishop of Calcutta, Madras or

Bombay or Archdeacon for ten years, or one thousand pounds per annum if he has resided in India as Bishop of Calcutta [Madras or Bombay] for seven years, or seven hundred and fifty pounds per annum if he has resided in India as Bishop of Calcutta [Madras or Bombay] for five years, or to any Bishop of Madras or Bombay a pension not exceeding eight hundred pounds per annum \* \* \* \* if he has resided in \* India as such Bishop for fifteen years.

Pensions Act, 1825, s. 15; Govt. of India Act, 1833, ss. 96, 98.]

Leave out of India does not count for pension: Leg. Dep. u. o. No. 635 of 1900, 197 of 1901 (*Raleigh, Minutes* No. 37). Pensions of Bishops are paid under this section.—See Leg. Dep. u. o. No. 141 of 1913, and B Pros., August, 1914, No. 51.

As to pension of Archdeacons, see *Stokes Minutes*, No. 32 (1880), and Leg. Dep. u. o. Nos. 2634 and 2698 of 1883.

The words "*Secretary of State*" were substituted for the words "Chancellor of the Exchequer", the words "*Madras and Bombay*" were inserted, and the words "to be paid quarterly" after the words "*per annum*" and the word "British" before the word "*India*" were repealed by the Government of India (Amendment) Act, 1916, Sch. I.—See *Explanatory Note* to Bill, in Leg. Dep. u. o. No. 33 of 1916.

Furlough rules.

211. His Majesty may make such rules as to the leave of absence of the Bishops of Calcutta, Madras and Bombay on furlough or medical certificate as seem to His Majesty expedient.

[Indian Bishops Act, 1842, ss. 1, 2, 3; Indian Bishops Act, 1871, s. 1.]

Leave allowances are fixed under s. 118, *ante*.

Establishment of Chaplains of Church of Scotland.

222. (1) Two members of the establishment of Chaplains maintained in each of the presidencies of Bengal, Madras and Bombay must always be ministers of the Church of Scotland, and shall be entitled to have, out of the revenues of India, such salary as is from time to time allotted to the Military Chaplains in the several presidencies.

[Govt. of India Act, 1833, s. 102.]

(2) The ministers so appointed Chaplains must be ordained and inducted by the Presbytery of Edinburgh according to the forms and solemnities used in the Church of Scotland, and shall be subject to the spiritual and ecclesiastical jurisdiction in all things of the Presbytery of Edinburgh, whose judgments shall be subject to dissent, protest and appeal to the Provincial Synod of Lothian and Tweeddale and to the General Assembly of the Church of Scotland.

The provisions here re-enacted are probably obsolete.—See Serial No. 60 in Leg. Dep. A Pros., March, 1915, Nos. 23—31.

Saving as to grants to Christians.

223. Nothing in this Act shall prevent the Governor-General in Council from granting, with the sanction of the Secretary of State in Council, to any sect, persuasion or community of Christians, not being of the Church of England or Church of Scotland, such sums of money as may be expedient for the purpose of instruction or for the maintenance of places of worship.

[Govt. of India Act, 1833, s. 102, prov.]

## PART XI.

## OFFENCES, PROCEDURE AND PENALTIES.

[East India Company Act, 1770, s. 4.]

124. If any person holding office under the Crown in India does any of the following things, that is to say—

Certain acts to be misdemeanours.

(1) If he oppresses any British subject within his jurisdiction or in the exercise of his authority ; or

Oppression.

[East India Company Act, 1793, s. 65 ; Govt. of India Act, 1833, s. 80.]

(2) If (except in case of necessity, the burden of proving which shall be on him) he wilfully disobeys, or wilfully omits, forbears or neglects to execute, any orders or instructions of the Secretary of State ; or

Wilful disobedience.

(3) If he is guilty of any wilful breach of the trust and duty of his office ; or

Breach of duty.

[East India Company Act, 1793, s. 137 ; Govt. of India Act, 1833, s. 76.]

(4) If, being the Governor-General, or a Governor, Lieutenant-Governor or Chief Commissioner, or a member of the Executive Council of the Governor-General or of a Governor or Lieutenant-Governor, or being a person employed or concerned in the collection of revenue or the administration of justice, he is concerned in, or has any dealings or transactions by way of, trade or business in any part of India, for the benefit either of himself or of any other person, otherwise than as a shareholder in any joint-stock company or trading corporation ; or

Trading.

[East India Company Act, 1772, ss. 23, 24, 25 ; East India Company Act, 1793, ss. 62, 64 ; Govt. of India Act, 1833, s. 76.]

(5) If he demands, accepts or receives, by himself or another, in the discharge of his office, any gift, gratuity or reward, pecuniary or otherwise, or any promise of the same, except in accordance with such rules as may be made by the Secretary of State as to the receipt of presents, and except in the case of fees paid or payable to barristers, physicians, surgeons and chaplains in the way of their respective professions ;

Receiving presents.

[East India Company Act, 1793, ss. 62, 63 ; Govt. of India Act, 1833, ss. 76, 80.]

he shall be guilty of a misdemeanour ; and if he is convicted of having demanded, accepted or received any such gift, gratuity or reward, the same, or the full value thereof shall be forfeited to the Crown, and the Court may order that the gift, gratuity or reward, or any part thereof, be restored to the person who gave it, or be given to the prosecutor or informer, and that the whole or any part of any fine imposed on the offender be paid or given to the prosecutor or informer, as the Court may direct.

*See notes to s. 117, Herbert's Digest.*



Most of the offences mentioned in this section are also punishable under the Indian Penal Code.

A summary of the rules in force with respect to trading by officers of Government will be found in C. K. Roy's edition of "*Rules relating to Government Servants*" (1913).

Section 66 of the Presidency Banks Act, 1876 (XI of 1876), provides that nothing in the East India Company Act, 1793, shall prevent any Government servant or Judge of a High Court from being a member of any corporation established thereunder. For a discussion on the provisions of s. 137 of that Statute, see Home Dep. Confidential Pros. October, 1912, No. 17. As to the position of non-official Members of Executive Councils with regard to trading (and the receipt of gifts) see Leg. Dep. u. o. No 143 of 1913, and the amendment which was proposed in clause 11 of the Amendment Bill of 1915 (Leg. Dep. A Pros., April, 1915, Nos. 41—47).

Similar prohibitions of trading or business transactions are contained in enactments of the Indian legislatures. See, e.g., Act XV of 1848 (trading by officers of Supreme Courts); Act VII of 1878, s. 74 and Burma Act IV of 1902, s. 76 (by forest officers); Act V of 1861, s. 10, XXI of 1859, s. 19; Bombay Act VII of 1867, s. 11 (by police officers); Acts XI of 1876, s. 34, and V of 1879, s. 3 (by officers of presidency banks); Act XVIII of 1881, s. 155; Bombay Act V of 1879, s. 31; Madras Regulation I of 1803, s. 40; Madras Regulation II of 1803, s. 64; Bengal Regulation II of 1793, s. 18 (by revenue officers); Bengal Regulation XXXVIII of 1798, s. 2 (loans by covenanted servants).

The provisions of sub-section (5) do not debar Judges of High Courts from accepting honoraria for conducting University examinations: Leg. Dep. u. o. No. 355 of 1911.

As to the exemption of certain high officers from prosecution in High Courts, see s. 110, *ante*.

Loans to  
Princes or  
Chiefs.

125. (1) If any European British subject, without the previous consent in writing of the Secretary of State in Council or of the Governor-General in Council or of a Local Government, by himself or another—

[East India Act, 1797, s. 28, Govt. of India Act, 1912, s. 1

(a) lends any money or other valuable thing to any Prince or Chief in India; or

(b) is concerned in lending money to, or raising or procuring money for, any such Prince or Chief, or becomes security for the re-payment of any such money; or

(c) lends any money or other valuable thing to any other person for the purpose of being lent to any such Prince or Chief; or

(d) takes, holds or is concerned in any bond, note or other security granted by any such Prince or Chief for the repayment of any loan or money hereinbefore referred to;

he shall be guilty of a misdemeanour.

(2) Every bond, note or security for money, of what kind or nature soever, taken, held or enjoyed, either directly

or indirectly, for the use and benefit of any European British subject, contrary to the intent of this section, shall be void.

See notes to s. 118, *Ilbert's Digest*.

These provisions do not apply to a case in which a British subject seeks to acquire land for cultivation : Leg. Dep. u. o. No. 235 of 1889. They would appear to cover all loans by Native States : *Hobhouse, Minutes* No. 40 (1873), paragraph 21. It has been held that a company is not a British subject within the meaning of the section, though a British shareholder would probably fall under the term *indirectly* : Leg. Dep. u. o. Nos. 555 of 1895, 543 of 1906 (*Richards, Minutes* No. 74). The consent and approbation of Government should be stated on the face of the bond : Leg. Dep. u. o. No. 737 of 1891.

The expression "European British subject" is intended to exclude natives of India. It has been defined in some Indian enactments, *e.g.*, the Code of Criminal Procedure, 1898, s. 4, and the Guardians and Wards Act, 1890, s. 4 (7).

[East India Company Act, 1793, ss. 45, 46, 140; Govt. of India Act, 1912, s. 1 (1)].

126. (1) If any person carries on, mediately or immediately, any illicit correspondence, dangerous to the peace or safety of any part of British India, with any Prince, Chief, land-holder or other person having authority in India, or with the Commander, Governor or President of any foreign European settlement in India, or any correspondence, contrary to the rules and orders of the Secretary of State or of the Governor-General in Council or a Governor in Council, he shall be guilty of a misdemeanour; and the Governor-General or Governor may issue a warrant for securing and detaining in custody any person suspected of carrying on any such correspondence.

Carrying on dangerous correspondence.

(2) If, on examination taken on oath in writing of any credible witness before the Governor-General in Council or the Governor in Council, there appear reasonable grounds for the charge, the Governor-General or Governor may commit the person suspected or accused to safe custody, and shall within a reasonable time, not exceeding five days, cause to be delivered to him a copy of the charge on which he is committed.

(3) The person charged may deliver his defence in writing, with a list of such witnesses as he may desire to be examined in support thereof.

(4) The witnesses in support of the charge and of the defence shall be examined and cross-examined on oath in the presence of the person charged, and their depositions and examination shall be taken down in writing.

(5) If, notwithstanding the defence, there appear to the Governor-General in Council or Governor in Council reasonable grounds for the charge and for continuing the confinement, the person charged shall remain in custody until he is brought to trial in India or sent to England for trial.

(6) All such examinations and proceedings, or attested copies thereof under the seal of the High Court, shall be sent to the Secretary of State as soon as may be, in order to their being produced in evidence on the trial of the person charged in the event of his being sent for trial to England.

(7) If any such person is to be sent to England, the Governor-General or Governor, as the case may be, shall cause him to be so sent at the first convenient opportunity, unless he is disabled by illness from undertaking the voyage, in which case he shall be so sent as soon as his state of health will safely admit thereof.

(8) The examinations and proceedings transmitted in pursuance of this section shall be received as evidence in all Courts of law, subject to any just exceptions as to the competency of the witnesses.

*See notes to s. 120, Ilbert's Digest. •*

Power is conferred by this section only on the Governor-General and Governors of Presidencies.

"Oath" includes affirmation and declaration.—*See the Interpretation Act, 1889, s. 3.*

For provisions *re* taking evidence in India for use in England, *see the Evidence by Commission Act, 1885 (48 & 49 Vict., c. 74).*

Prosecution  
of offences in  
England.

127. (1) If any person holding office under the Crown in India commits any offence under this Act, or any offence against any person within his jurisdiction or subject to his authority, the offence may, without prejudice to any other jurisdiction, be enquired of, heard, tried and determined before His Majesty's High Court of Justice, and be dealt with as if committed in the county of Middlesex.

[East India Company Act, 1770, s. 4; East India Company Act, 1772, s. 39; East India Company Act, 1793, ss. 140, 141.]

(2) Every British subject shall be amenable to all Courts of justice in the United Kingdom, of competent jurisdiction to try offences committed in India, for any offence committed within India and outside British India, as if the offence had been committed within British India.

[East India Company Act, 1793, s. 67].

*See notes to s. 119, Ilbert's Digest.*

The provisions of s. 67 of the East India Company Act, 1793, were repealed as to Indian Courts by the Foreign Jurisdiction and Extradition Act, 1872 (XI of 1872), Sch. I.

By Statute English Courts have in certain other cases jurisdiction to try offences committed outside the United Kingdom, *e.g.*, Offences against the Person Act, 1861 (24 & 25 Vict., c. 100), ss. 9 and 10, Foreign Enlistment Act, 1870 (33 & 34 Vict., c. 90), ss. 16 and 17, Larceny Act, 1896 (59 & 60 Vict., c. 52), Official Secrets Act, 1911, (1 & 2 Geo. 5, c. 28), s. 10.

For other provisions of the present Act relating specifically to trial in England, *see* ss. 45(2) and 126, *ante*. Compare s. 129, *post*, and s. 188, Code of Criminal Procedure, 1898 (Act V of 1898).

[East India Company Act, 1793, s. 141; Indian High Courts Act, 1861, ss. 11, 16.]

**128.** Every prosecution before a High Court in British India in respect of any offence referred to in the last foregoing section must be commenced within six years after the commission of the offence. Limitation for prosecutions in British India.

*See notes to s. 119, Ilbert's Digest.*

[East Indian Company Act, 1770, s. 4; East India Company Act, 1772, s. 39; East India Company Act, 1793, s. 140.]

**129.** If any person commits any offence referred to in this Act, he shall be liable to such fine or imprisonment or both, as the Court thinks fit, and shall be liable, at the discretion of the Court, to be adjudged to be incapable of serving the Crown in India in any office, civil or military; and if he is convicted in British India by a High Court, the Court may order that he be sent to Great Britain. Penalties.

Many of the offences referred to in this Act are also punishable under the Indian Penal Code.—*See notes to s. 124, ante.*

The offences referred to are misdemeanours which by English law are punishable with fine and imprisonment in the discretion of the Court unless a specific punishment is provided by Statute.—*See Stephens' Digest of Criminal Law*, art. 23.

As to taking evidence in India for use in England, see the Evidence by Commission Act, 1885 (48 & 49 Vict., c. 74).

## PART XII.

### SUPPLEMENTAL.

#### *Repeal of Acts.*

**130.** The Acts specified in the Fourth Schedule to this Act are hereby repealed, to the extent mentioned in the third column of that Schedule: Repeal.

Provided that this repeal shall not affect—

- (a) the validity of any law, charter, Letters Patent, Order in Council, warrant, proclamation, notification, rule, resolution, order, regulation, direction or contract made, or form prescribed, or table settled, under any enactment hereby repealed and in force at the commencement of this Act, or
- (b) the validity of any appointment, or any grant or appropriation of money or property, made under any enactment hereby repealed, or
- (c) the tenure of office, conditions of service, terms of remuneration or right to pension of any officer appointed before the commencement of this Act.

The savings in the proviso provide for cases not covered by the general savings in s. 38 (2) of the Interpretation Act, 1889.

*Savings.*

Savings as to certain rights and powers. **131.** (1) Nothing in this Act shall derogate from any rights vested in His Majesty, or any powers of the Secretary of State in Council, in relation to the government of India. [Indian Councils Act, 1861, s. 52.]

(2) Nothing in this Act shall affect the power of Parliament to control the proceedings of the Governor-General in Council, or to repeal or alter any law made by any authority in British India, or to legislate for British India and the inhabitants thereof. [Govt. of India Act, 1833, s. 51.]

(3) Nothing in this Act shall affect the power of the Governor-General in Legislative Council to repeal or alter any of the provisions mentioned in the Fifth Schedule to this Act, or the validity of any previous exercise of this power. [Indian Councils Act, 1861, s. 22, proviso; Indian High Courts Act, 1861, ss. 9, 11 and 13; that the Parliamentary enactments relating to India were never intended to be, and cannot be construed as, a complete Code of the powers and rights exercisable by, or with reference to, the Government of India". Courts Act, 1865, s. 6.]

See note to s. 121, *Ilbert's Digest*, where he says "these savings reproduced from the Acts of 1833 and 1861 are important as showing that the Parliamentary enactments relating to India were never intended to be, and cannot be construed as, a complete Code of the powers and rights exercisable by, or with reference to, the Government of India". Sub-section (2) expressly preserves the supremacy of the Imperial Parliament.

Sub-section (3) saves the power of the Governor-General in Legislative Council to deal with certain provisions contained in Acts of Parliament prior to 1861 which are reproduced by the present Act. Cf. s. 65 (2) (i), *ante*, and see note to Fifth Schedule, *post*.

Treaties, contracts and liabilities of East India Company. **132.** All treaties made by the East India Company, so far as they are in force at the commencement of this Act, are binding on His Majesty, and all contracts made, and liabilities incurred, by the East India Company may, so far as they are outstanding at the commencement of this Act, be enforced by and against the Secretary of State in Council. [Govt. of India Act, 1858, s. 67.]

For treaties, see Aitchison's *Treaties, Engagements and Sanads*.

Can a treaty, unless confirmed by legislation, affect private rights of British subjects in time of peace?—*Walker V. Baird* (1892), L. R. A. C. 492, 496.

Orders of East India Company. **133.** All orders, regulations and directions lawfully made or given by the Court of Directors of the East India Company or by the Commissioners for the affairs of India, are, so far as they are in force at the commencement of this Act, deemed to be orders, rules and directions made or given by the Secretary of State under this Act. [Govt. of India Act, 1858, s. 59.]

*Definitions, Short Title and Commencement.*

Definitions. **134.** In this Act unless the context otherwise requires—

(1) "Governor-General in Council" means the Governor-General in Executive Council; [Govt. of India Act, 1833, s. 39; Indian Councils Act, 1861, s. 53.]

[Govt. of India Act, 1833, s. 56 ; Indian Councils Act, 1861, s. 53.]

(2) "Governor in Council" means a Governor in Executive Council ;

[Indian Councils Act, 1909, s. 3 (3).]

(3) "Lieutenant-Governor in Council" means a Lieutenant-Governor in Executive Council ;

(4) "Local Government" means a Governor in Council, Lieutenant-Governor in Council, Lieutenant-Governor or Chief Commissioner ;

(5) "office" includes place and employment ;

[East India Company Act, 1770, s. 4 ; East India Company Act, 1772, s. 39 ; East India Company Act, 1793, ss. 62, 65 ; Govt. of India Act, 1833, ss. 80, 87 ; Indian Civil Service Act, 1861, ss. 2, 3 ; Govt. of India Act, 1870, s. 6.]

(6) "province" includes a presidency ; and

[Indian Councils Act, 1892, s. 6.]

(7) references to rules made under this Act include rules or regulations made under any enactment hereby repealed, until they are altered under this Act.

*See notes to s. 124, Ilbert's Digest.*

Compare the definition of "Governor-General in Council" here given with the definition of "Government of India" in s. 3 (22) of the General Clauses Act, 1897 (X of 1897).

This section does not define expressions which have already been defined in the Interpretation Act, 1889 (52 & 53 Vict., c. 63), which applies to the present Act.

Other definitions will be found in some of the foregoing sections, e.g., "revenues of India" in s. 20 (3), "Indian Legislative Council" in s. 63 (1), "Indian Waters" in s. 66 (1), "Local Legislative Council" and "Local Legislature" in s. 73 (4), "High Court" in s. 101 (1).

The expression "British subject" is not defined in the present Act, but s. 1 of the British Nationality and Status of Aliens Act, 1914 (4 & 5 Geo. 5, c. 17) defines the expression "natural born British subject" and under s. 3 of the Act naturalized aliens have the same status as natural born British subjects. [*Cf. The King v. Speyer* and

*the King v. Cassel* (1916), 1 K. B. 595]. "British subject" is defined in s. 27 of the same Act.

As to subjects of Native States, *see* notes to s. 65, *ante*; and as to their eligibility for nomination to Legislative Councils and for civil or military office, *see* sections 63, 74, 76, 96A, 97, *ante*.

Short title  
and com-  
mencement.

135. This Act may be cited as the Government of India Act, 1915, and shall come into operation on the first day of January, one thousand nine hundred and sixteen.

## SCHEDULES.

### FIRST SCHEDULE.

Ss. 63 (2),  
74 (1), 76 (1).

#### MAXIMUM NUMBER OF NOMINATED OR ELECTED MEMBERS OF LEGISLATIVE COUNCILS.

[Indian  
Councils Act,  
1909, Sch. 1;  
Govt. of  
India Act,  
1912, ss. 3, 4  
(1), Sch. 1.]

Legislative Council.	Maximum Number.
Indian Legislative Council . . . . .	Sixty.
Local Legislative Councils—	
Bengal Legislative Council . . . . .	Fifty.
Madras Legislative Council . . . . .	Fifty.
Bombay Legislative Council . . . . .	Fifty.
Bihar and Orissa Legislative Council . . . . .	Fifty.
United Provinces Legislative Council . . . . .	Fifty.
Punjab Legislative Council . . . . .	Thirty.
Burma Legislative Council . . . . .	Thirty.
Assam Legislative Council . . . . .	Thirty.
Central Provinces Legislative Council . . . . .	Thirty.
Legislative Council of the Lieutenant-Governor of any Province hereafter constituted . . . . .	Thirty.

Under s. 63 (4), *ante*, the maximum number of Additional Members of the Indian Legislative Council may be increased by the addition of a Lieutenant-Governor or Chief Commissioner.

SECOND SCHEDULE.<sup>1</sup>

## OFFICIAL SALARIES, ETC.

[Govt. of  
India Act,  
1833, s. 76;  
Govt. of  
India Act,  
1853, s. 35;  
Govt. of  
India Act,  
1912, s. 1(1).]

Officer.	Maximum annual salary.
Governor-General of India . . .	Two hundred and fifty-six thousand rupees.
Governor . . . . .	One hundred and twenty-eight thousand rupees.
Commander-in-Chief of His Majesty's forces in India.	One hundred thousand rupees.
Lieutenant-Governor . . . . .	One hundred thousand rupees.
Ordinary Member of the Governor-General's Executive Council.	*
Member of a Governor's Executive Council.	Sixty-four thousand rupees.

\* No statutory maximum has been fixed.

<sup>1</sup> See note to s. 85, *ante*.

[Indian Civil  
Service Act,  
1861,  
Schedule.]

## THIRD SCHEDULE.

## OFFICES RESERVED TO THE INDIAN CIVIL SERVICE.

*Part I.—General.*

1. Secretaries, Joint Secretaries, Deputy Secretaries and Under-Secretaries to the several Governments in India, except the Secretaries, Joint Secretaries, Deputy Secretaries and Under-Secretaries in the Army, Marine and Public Works Departments.

2. Accountants-General.

3. Members of the Board of Revenue in the Presidencies of Bengal and Madras, the United Provinces of Agra and Oudh and the Province of Bihar and Orissa.

4. Secretaries to those Boards of Revenue.

5. Commissioners of Customs, Salt, Excise and Opium.

6. Opium Agent.

*Part II.—Offices in the Provinces which were known in the year 1861 as "Regulation Provinces".*

7. District and Sessions Judges.

8. Additional District or Sessions Judges and Assistant Sessions Judges.

9. District Magistrates.

10. Joint Magistrates.



11. Assistant Magistrates.
12. Commissioners of Revenue.
13. Collectors of Revenue or Chief Revenue Officers of districts.
14. Assistant Collectors.

This Schedule reproduces the Schedule appended to the Indian Civil Service Act, 1861 (24 & 25 Vict., c. 54) so modified as to adapt the nomenclature to existing conditions.

It has been held that Assistant Secretaryships to the Government are not included under the expressions "Secretaries, Joint Secretaries, Deputy Secretaries and Under-Secretaries": Leg. Dep. u. o. No. 279 of 1910.

"*Public Works Department.*" See Leg. Dep. u. o. No. 452 of 1905.

An officer who is not a member of the Indian Civil Service cannot be appointed to the office of Accountant-General except under the provisions reproduced by s. 100, *ante*, *Hobhouse Minutes*, No. 52 (1874).

"*Provinces which were known in the year 1861 as Regulation Provinces.*" "Province" here means any definite and well-known area, e.g., Sylhet, which was part of a "Regulation Province" in 1861 now forms part of a non-regulation province: Leg. Dep. u. o. No. 655 of 1907; see also u. o. No. 257 of 1914. It was held that as Sindh was a non-regulation province in 1861 the appointment to a Commissionership in Sindh of a person who was not a member of the Indian Civil Service was not illegal; Leg. Dep. u. o. No. 884 of 1900.

As to the origin and meaning of the expression "non-regulation province", see *Libert*, pp. 102, 105.

"*Collector.*" Does not include the Collector of Bombay; Secretary of State's Despatch to Bombay, No. 4-Rev., dated 15th February, 1883.

"*Assistant Collector.*" Does not cover the Assistant Collector of Bombay; Leg. Dep. u. o. No. 372 of 1898.

## Section 130.

## FOURTH SCHEDULE.

## ACTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
10 Geo. 3, c. 47 .	The East India Company Act, 1770.	The whole Act.
13 Geo. 3, c. 63 .	The East India Company Act, 1772.	The whole Act, except sections forty-two, forty-three and forty-five. <sup>1</sup>
21 Geo. 3, c. 70 .	The East India Company Act, 1780.	The whole Act, except section eighteen.
26 Geo. 3, c. 57 .	The East India Company Act, 1786.	Section thirty-eight. <sup>1</sup>

<sup>1</sup> Sections 42, 43 and 45 of the East India Company Act, 1772, and the whole of the East India Company Act, 1786, have since been repealed by the Government of India (Amendment) Act, 1916, Schedule II, *post*. The whole of the East India Company Act, 1784 (24 Geo. 3, Sess. 2, c. 25), which is not included in this Schedule, has also been repealed by *ibid.* For reasons, see *Explanatory Note* to Bill in Leg. Dep. u. o. No. 33 of 1916.

## (FOURTH SCHEDULE.—ACTS REPEALED).

Session and Chapter.	Short Title.	Extent of Repeal.
33 Geo. 3, c. 52	The East India Company Act, 1793.	The whole Act.
37 Geo. 3, c. 142	The East India Act, 1797.	The whole Act, except section twelve.
39 & 40 Geo. 3, c. 79	The Government of India Act, 1800.	The whole Act.
53 Geo. 3, c. 155	The East India Company Act, 1813.	The whole Act.
55 Geo. 3, c. 84	The Indian Presidency Towns Act, 1815.	The whole Act.
4 Geo. 4, c. 71	The Indian Bishops and Courts Act, 1823.	The whole Act.
6 Geo. 4, c. 85	The Indian Salaries and Pensions Act, 1825.	The whole Act.
7 Geo. 4, c. 56	The East India Officers' Act, 1826.	The whole Act.
3 & 4 Will. 4, c. 85	The Government of India Act, 1833.	The whole Act, except section one hundred and twelve.
5 & 6 Will. 4, c. 52	The India (North-West Provinces) Act, 1835.	The whole Act.
7 Will. 4 and 1 Vict., c. 47.	The India Officers' Salaries Act, 1837.	The whole Act.
5 & 6 Vict., c. 119	The Indian Bishops Act, 1842.	The whole Act.
16 & 17 Vict., c. 95	The Government of India Act, 1853.	The whole Act. <sup>1</sup>
17 & 18 Vict., c. 77.	The Government of India Act, 1854.	The whole Act. <sup>1</sup>
21 & 22 Vict., c. 106	The Government of India Act, 1858.	The whole Act, except section four.
22 & 23 Vict., c. 41	The Government of India Act, 1859.	The whole Act.
23 & 24 Vict., c. 100	The European Forces (India) Act, 1860.	The whole Act.
23 & 24 Vict., c. 102	The East India Stock Act, 1860.	The whole Act, except section six.
24 & 25 Vict., c. 54	The Indian Civil Service Act, 1861.	The whole Act.
24 & 25 Vict., c. 67	The Indian Councils Act, 1861.	The whole Act.
24 & 25 Vict., c. 104	The Indian High Courts Act, 1861.	The whole Act.
28 & 29 Vict., c. 15	The Indian High Courts Act, 1865.	The whole Act.

<sup>1</sup> Section 19 of the Government of India Act, 1853, and section 4 of the Government of India Act, 1854, are included for repeal in this Schedule but their provisions are, in effect, kept in force by s. 52 of the present Act for the purposes of constituting the province of Agra into a presidency under a Governor in Council.

## (FOURTH SCHEDULE.—ACTS REPEALED.)

Session and Chapter.	Short Title.	Extent of Repeal.
28 & 29 Vict., c. 17 .	The Government of India Act, 1865.	The whole Act.
32 & 33 Vict., c. 97 .	The Government of India Act, 1869.	The whole Act.
32 & 33 Vict., c. 98 .	The Indian Councils Act, 1869.	The whole Act.
33 & 34 Vict., c. 3 .	The Government of India Act, 1870.	The whole Act.
33 & 34 Vict., c. 59 .	The East India Contracts Act, 1870.	The whole Act.
34 & 35 Vict., 34 .	The Indian Councils Act, 1871.	The whole Act.
34 & 35 Vict., c. 62 .	The Indian Bishops Act, 1871.	The whole Act.
37 & 38 Vict., c. 3 .	The East India Loan Act, 1874.	Section fifteen.
37 & 38 Vict., c. 77 .	The Colonial Clergy Act, 1874.	Section thirteen.
37 & 38 Vict., c. 91 .	The Indian Councils Act, 1874.	The whole Act.
43 Vict., c. 3 .	The Indian Salaries and Allowances Act, 1880.	The whole Act.
44 & 45 Vict., c. 63 .	The India Office Auditor Act, 1881.	The whole Act.
47 & 48 Vict., c. 38 .	The Indian Marine Service Act, 1884.	Sections two, three, four and five.
55 & 56 Vict., c. 14 .	The Indian Councils Act, 1892.	The whole Act.
3 Edw., 7, c. 11	The Contracts (India Office) Act, 1903.	The whole Act.
4 Edw., 7, c. 26 .	The Indian Councils Act, 1904.	The whole Act.
7 Edw., 7, c. 35 .	The Council of India Act, 1907.	The whole Act.
9 Edw., 7, c. 4 .	The Indian Councils Act, 1909.	The whole Act.
1 & 2 Geo. 5, c. 18 .	The Indian High Courts Act, 1911.	The whole Act.
1 & 2 Geo. 5, c. 25 .	The Government of India (Amendment) Act, 1911.	The whole Act.
2 & 3 Geo. 5, c. 6 .	The Government of India Act, 1912.	The whole Act.

The enactments included in this Schedule of repeals have been re-enacted by the present Statute: *see Table of Comparison* appended to the India Office edition of the Government of India Acts, 1915 & 1916. But various other statutory enactments relating to India, which have not been so included, remain in force.—*See Collection of Statutes relating to India*, vols. I and II.

Section 131  
(3).

FIFTH SCHEDULE.[<sup>1</sup>]

PROVISIONS OF THIS ACT WHICH MAY BE REPEALED OR ALTERED  
BY THE GOVERNOR-GENERAL IN LEGISLATIVE COUNCIL.

Section.	Subject.
62 . . . . .	Power to extend limits of Presidency towns.
106 . . . . .	Jurisdiction, powers and authority of High Courts.
108 (1) . . . . .	Exercise of jurisdiction of High Court by single Judges or Division Courts.
109 . . . . .	Power for Governor-General in Council to alter local limits of jurisdiction of High Courts, etc.
110 . . . . .	Exemption from jurisdiction of High Courts.
111 . . . . .	Written order by Governor-General in Council a justification for act in High Court.
112 . . . . .	Law to be administered in cases of inheritance, succession, contract and dealing between party and party.
114 (2) . . . . .	Powers of Advocate-General.
124 (1) . . . . .	Oppression.
124 (4)—so far as it relates to persons employed or concerned in the collection of revenue or the administration of justice.	Trading.
124 (5)—so far as it relates to persons other than the Governor-General, a Governor, or a Member of the Executive Council of the Governor-General or of a Governor.	Receiving presents.
125 . . . . .	Loans to Princes or Chiefs.
126 . . . . .	Carrying on dangerous correspondence.
128 . . . . .	Limitation for prosecutions in British India.
129 . . . . .	Penalties.

[<sup>1</sup>] See note to s. 131 (3), *ante*. This Schedule was substituted for the original Fifth Schedule by the Government of India (Amendment) Act, 1916—Sch. I, *post*. The original Schedule contained various enactments which were considered unfitted to be dealt with by the Indian Legislature, *e.g.*, enactments dealing with the relations between the Secretary of State and the Governor-General. See *Explanatory Note* in Leg. Dep. u. o. No. 33 of 1916, and u. o. No. 250 of 1915 (p. 412 B).

## THE GOVERNMENT OF INDIA (AMENDMENT) ACT, 1916.

(6 & 7 Geo. 5, Ch. 37.)

### ARRANGEMENT OF SECTIONS.

#### Section.

1. Elections and nominations for Legislative Councils.
2. Removal of doubts as to validity of certain Indian laws.
3. Qualification of rulers and subjects of certain States for office.
4. Admission to Indian Civil Service.
5. Removal of doubts as to validity of Orders in Council under Foreign Jurisdiction Act.
6. Transfer of India stock by deed.
7. Minor amendments, repeals, and saving.
8. Short title, commencement, printing and construction.

FIRST SCHEDULE.—Further amendments of the Government of India Act, 1915.

SECOND SCHEDULE.—Enactments repealed.

An Act to amend certain enactments relating to the government of India, and to remove doubts as to the validity of certain Orders in Council made for India.

[23rd August, 1916.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Elections and nominations for Legislative Councils.

1. (1) In section 63 of the Government of India Act, 1915 (in this Act referred to as "the principal Act"), shall be inserted the following sub-sections:—

“(8a) Rules made under this section may provide for the final decision of doubts or disputes as to the validity of an election.

“(6b) Subject to any rules made under this section, any person who is a ruler or subject of any State in India shall be eligible to be nominated a member of a Legislative Council.”

(2) In sections 74 and 76 of the principal Act corresponding sub-sections shall be inserted, and shall be numbered (4a) and (4b) in section 74 and (3a) and (3b) in section 76.

(3) This section shall apply to and shall validate rules and nominations made as well before as after the commencement of this Act.

See notes to sections 63, 74 and 76 of the Government of India Act, 1915, *ante*. Sub-section (3) applies retrospectively to the existing rules and to past nominations.

2. (1) In section 71 of the principal Act shall be inserted the following sub-section :—

Removal of doubts as to validity of certain Indian laws.

“(3a) A Regulation made under this section for any territory shall not be invalid by reason only that it confers, or delegates power to confer, on Courts or administrative authorities power to sit or act outside the territory in respect of which they have jurisdiction or functions, or that it confers, or delegates power to confer, appellate jurisdiction or functions on Courts or administrative authorities sitting or acting outside the territory.”

(2) In section 84 of the principal Act, after the words “Governor General in Legislative Council” shall be inserted the words “or a Local Legislature,” and, at the end of the section, shall be inserted the following words :—

“A law made by any authority in British India and repugnant to any provision of this or any other Act of Parliament shall, to the extent of that repugnancy, but not otherwise, be void.”

(3) This section shall apply to and shall validate laws made as well before as after the commencement of this Act.

See notes to section 71(3a) and section 84 of the Government of India Act, 1915, *ante*. These amendments are retrospective by virtue of the provisions of sub-section (3).

3. After section 96 of the principal Act shall be inserted the following section :—

Qualification of rulers and subjects of certain States for office.

“96 A. Notwithstanding anything in any other enactment, the Governor General in Council, with the approval of the Secretary of State in Council, may,

by notification, declare that, subject to any conditions or restrictions prescribed in the notification, any named ruler or subject of any State in India shall be eligible for appointment to any civil or military office under the Crown to which a native of British India may be appointed, or any named subject of any State, or any named member of any independent race or tribe, in territory adjacent to India, shall be eligible for appointment to any such military office."

*See notes to section 96-A of the Government of India Act, 1915, ante.*

Admission to  
Indian Civil  
Service.

4. In section 97 of the principal Act, after the words "British subjects" shall be inserted the words "and of persons in respect of whom a declaration has been made under the last foregoing section who are," and, after sub-section (2), shall be inserted the following sub-section:—

"(2a) The admission to the Indian Civil Service of a British subject who or whose father or mother was not born within His Majesty's dominions shall be subject to such restrictions as the Secretary of State in Council, with the advice and assistance of the Civil Service Commissioners, may think fit to prescribe, and all such restrictions shall be included in the rules."

*See notes to section 97 of the Government of India Act, 1915, ante.*

Removal of  
doubts as to  
validity of  
Orders in  
Council under  
Foreign Juris-  
diction Act.

5. An Order of His Majesty in Council heretofore or hereafter made under the Foreign Jurisdiction Act, 1890, empowering the Governor General of India in Council to make rules and orders in respect of Courts or administrative authorities acting for any territory, shall not be invalid by reason only that it confers, or delegates power to confer, on Courts or administrative authorities power to sit or act outside the territory in respect of which they have jurisdiction or functions, or that it confers, or delegates power to confer, appellate jurisdiction or functions on Courts or administrative authorities sitting or acting outside the territory.

This section, which is retrospective, removes a doubt which had been raised as to the validity of the Indian (Foreign Jurisdiction) Order in Council, 1902, made under the Foreign Jurisdiction Act, 1890 (53 & 54 Vict., c. 37). Section 9 of that Act empowers His Majesty by Order in Council to confer foreign jurisdiction on Courts in British India, and the Secretary of State was advised that the delegation to the Governor General in Council of His Majesty's powers under s. 9 is *ultra vires*. The Order in Council of 1902, in so far as it authorises such delegation, is now validated with retrospective effect—*See Memorandum to Bill* (clause 5) in Legislative Department Proceedings April, 1915, Nos. 41-47, and U. O. 33 of 1916.

Compare the provisions of s. 71 (3a) of the Govt. of India Act, 1915, *ante*.

For rules and orders made by the Governor General in Council under the Order in Council, *see British Enactments in force in Native States* (1914).

6.—(1) India stock may, if registered for the time being as stock transferable by deed in manner provided by regulations made under this section, be transferred by deed. Transfer of India stock by deed.

(2) The Banks of England and Ireland, respectively, with the concurrence of the Secretary of State in Council, shall provide by regulations for a separate stock register being kept for India stock which is for the time being transferable by deed, for the conditions upon which stock is to be entered in or removed from that register, for the mode in which the transfer by deed is to be carried out, and for the payment of any fees in respect of the entry or removal of stock in or form the register, and the carrying out of any transfer of stock by deed.

(3) The provisions of all enactments relating to India stock which are in force at the commencement of this Act shall apply to stock transferable by deed in pursuance of this section as they apply to stock transferable in the books of the Banks of England or Ireland, or of the Secretary of State in Council, except so far as express provision is made to the contrary by this section or by the regulations made thereunder.

(4) No stamp duty shall be payable in respect of any deed of transfer of India stock or any dividend warrant or register certificate relating to India stock.

(5) In this section the expression "India stock" means any stock created and issued, whether before or after the commencement of this Act, by the Secretary of State in Council under the authority of Parliament.

For definitions of "Bank of England" and "Bank of Ireland", see s. 12 of the Interpretation Act, 1889.

This section is intended to facilitate the transfer of India stock by deed and to exempt from stamp duty dividend warrants and registry certificates relating to India stock. It adapts to India the provisions of s. 71 of the National Debt Act, 1870 (33 & 34 Vict., c. 71) and s. 17 of the Finance Act, 1911 (1 & 2 Geo. 5, c. 48)—See *Memorandum to Bill* (clause 12) in Legislative Department Progs. April, 1915, Nos. 41—47, and U. O. 33 of 1916.

7. (1) The principal Act shall be further amended in manner appearing in the First Schedule to this Act. Minor amendments, repeals and saving.

(2) The enactments specified in the Second Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.

(3) Nothing in this Act shall affect any right acquired before the commencement of this Act under any judgment or order of a Court of competent jurisdiction.



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The minor amendments of the principal Act are relegated to a Schedule by sub-section (1). See notes to the sections amended, *ante*.

Sub-section (2) repeals certain obsolete enactments—see note to Schedule II, *post*.

Sub-section (3) saves prior judicial proceedings as some of the provisions of the principal Act are retrospective. Its provisions were, however, originally included in the Bill with special reference to a proposed amendment of s. 84 intended to validate Indian enactments which barred the right to sue the Secretary of State in Council in particular cases or classes of cases. This proposed amendment was ultimately dropped. See note to s. 84 of the Government of India Act, 1915, *ante*, and *Memorandum* (clause 7) in Legislative Department Progs. April, 1915, Nos. 41—47.

Short title,  
commence-  
ment, print-  
ing and  
construction.

8. (1) This Act may be cited as the Government of India (Amendment) Act, 1916, and the principal Act and this Act may be cited together as the Government of India Acts, 1915 and 1916.

(2) This Act shall come into operation on the first day of September, one thousand nine hundred and sixteen.

(3) Where any enactment or word is directed by this Act, or by any Act for the time being in force, whether passed before or after the commencement of this Act, to be inserted in or added to the principal Act, or to be substituted in the principal Act for any other enactment or word, or where any enactment or word in the principal Act is so directed to be repealed, then all copies of the principal Act printed by His Majesty's printers after that direction takes effect shall be printed with that enactment or word inserted in or added to the Act, or printed therein in lieu of any enactment or word for which the same is substituted, or omitted therefrom, according as the direction requires, and with the sections and sub-sections numbered in accordance with the direction; and the principal Act shall be construed as if it had, at the time at which the direction takes effect, been enacted with that addition, substitution or omission.

(4) A reference in any enactment, whether passed before or after the commencement of this Act, to the principal Act shall, unless the context otherwise requires, be construed to refer to that Act as amended by any enactment for the time being in force.

Sub-sections (3) and (4) are based on s. 8 (2) and (3) of the Army (Annual) Act, 1885 (48 & 49 Vict., c. 8), and require that all future authorised copies of the Government of India Act, 1915, be printed with the amendments shown *in loco* in the same way as the official annual editions of the Army Act. See *Explanatory Note* in Legislative Department U. O. 33 of 1916. Sub-section (3) seems to suggest that all future amendments of the Act of 1915 should be textual so that the whole law should be contained in a single Act, as in the case of Indian Acts which are invariably amended textually.

## SCHEDULES.

### FIRST SCHEDULE.

#### FURTHER AMENDMENTS OF THE GOVERNMENT OF INDIA Act, 1915.

Enactment to be amended.	Amendment.
The Government of India Act, 1915 (5 & 6 Geo. 5, c. 61).	
Section 3 (3) . . .	The word " British," where secondly occurring, shall be repealed.
Section 13 (1) . . .	For this sub-section shall be substituted the following sub-section :—
	<p>" (1) Where an order or communication concerns the levying of war, or the making of peace, or the public safety, or the defence of the realm, or the treating or negotiating with any prince or State, or the policy to be observed with respect to any prince or State, and a majority of votes therefor at a meeting of the Council of India is not required by this Act, the Secretary of State may send the order or communication to the Governor General in Council or to any Governor in Council or officer or servant in India without submitting it to a meeting of the Council or depositing it for the perusal of the members of the Council or sending or giving notice of the reasons for making it, if he considers that it is of a nature to require secrecy."</p>
Section 13 (2) . . .	The words " or any of the matters aforesaid " shall be substituted for the words " or the levying of war, or the making of peace, or negotiations or treaties with any prince or State."
Section 21 . . .	At the end of this section shall be added the words " Provided that a grant or appropriation made in accordance with provisions or restrictions prescribed by the Secretary of State in Council with the concurrence of a majority of votes at a meeting of the Council shall be deemed to be made with the concurrence of a majority of such votes."
Section 26 . . .	The words " twenty-eight days " shall be substituted for the words " fourteen days."

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Enactment to be amended.	Amendment.
Section 27 (10) . . .	The words "or retiring" shall be inserted after the word "superannuation"; the words "and their legal personal representatives shall, for the purposes of gratuity" shall be inserted after the word "allowance;" and the words "the auditor and his assistants" shall be substituted for the word "they."
Sections 28 (1) and 30 (1) .	The words "or personal" shall be inserted after the word "real," where secondly occurring, and the words "or otherwise" shall be inserted after the word "mortgage."
Section 28 (2) . . .	The word "two" shall be substituted for the word "three."
Sections 63(3) and 74(2) .	The words "any office of profit" shall be substituted for the word "office."
Sections 64 (3), 75 (3) and 78 (2).	The words "or when questions are asked" shall be inserted after the words "any matter of general public interest."
Sections 37 (3) and 80 (3) .	The words "or when questions are asked" shall be inserted after the words "at any such discussion."
Section 86 (1) . . .	The words "and a Lieutenant-Governor in Council" shall be inserted after the words "a Governor in Council."
Section 92 (3) . . .	The words "or special duty" shall be inserted after the words "is absent on leave."
Section 94 . . .	The words "or special duty" shall be inserted after the words "absence on leave," and the words "absence may be permitted" shall be substituted for the words "leave may be granted."
Section 99 (1) . . .	The words "in British India," where secondly occurring, shall be repealed.
Section 106 . . .	In this section shall be inserted the following sub-section :— " (1 a). The Letters Patent establishing, or vesting jurisdiction, powers or authority in, a High Court may be amended from time to time by His Majesty by farther Letters Patent."
Section 107, proviso . . .	The word "law" shall be substituted for the word "Act."
Section 109 (1) . . .	The words "any British subject for the time being within" shall be substituted for the words "Christian subjects of His Majesty resident in."

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Enactment to be amended.	Amendment.
Section 110 (1)	The words " Lieutenant-Governor and Chief Commissioner " shall be inserted after the words " each Governor," and the words " the Executive Council of the Governor-General or of a Governor or Lieutenant-Governor " shall be substituted for the words " their respective Executive Councils."
Section 114	At the end of this section shall be added the following sub-section :—  " (3) On the occurrence of a vacancy in the office of Advocate-General or during any absence or deputation of an Advocate-General, the Governor General in Council in the case of Bengal, and the Local Government in other cases, may appoint a person to act as Advocate-General ; and the person so appointed may exercise the powers of an Advocate-General until some person has been appointed by His Majesty to the office and has entered on the discharge of his duties, or until the Advocate-General has returned from his absence or deputation, as the case may be, or until the Governor General in Council or the Local Government, as the case may be, cancels the acting appointment."
Section 120	The words " Secretary of State " shall be substituted for the words " Chancellor of the Exchequer ; " the words " Madras or Bombay " shall be inserted after the words " Bishop of Calcutta," where thirdly and fourthly occurring ; and the words " to be paid quarterly " and the word " British " shall be repealed.

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For the Fifth Schedule shall be substituted the following :—

Section 131  
(3).

“FIFTH SCHEDULE.

PROVISIONS OF THIS ACT WHICH MAY BE REPEALED OR ALTERED BY THE GOVERNOR GENERAL IN LEGISLATIVE COUNCIL.

Section.	Subject.
62 . . . .	Power to extend limits of presidency-towns.
106 . . . .	Jurisdiction, powers and authority of High Courts.
108(1) . . . .	Exercise of jurisdiction of High Court by single judges or Division Courts.
109 . . . .	Power for Governor General in Council to alter local limits of jurisdiction of High Courts, etc.
110 . . . .	Exemption from jurisdiction of High Courts.
111 . . . .	Written order by Governor General in Council a justification for act in High Court.
112 . . . .	Law to be administered in cases of inheritance, succession, contract and dealing between party and party.
114 (2) . . . .	Powers of Advocate-General.
124 (1) . . . .	Oppression.
124 (4)—so far as it relates to persons employed or concerned in the collection of revenue or the administration of justice.	Trading.
124 (5)—so far as it relates to persons other than the Governor General, a Governor, or a member of the Executive Council of the Governor General or of a Governor.	Receiving presents.
125 . . . .	Loans to princes or chiefs.
126 . . . .	Carrying on dangerous correspondence.
128 . . . .	Limitation for prosecutions in British India.
129 . . . .	Penalties.”

## SECOND SCHEDULE.

Section 7(2).

## ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
13 Geo. 3, c. 63 .	The East India Company Act, 1772.	Sections forty-two, forty-three and forty-five.
24 Geo. 3, sess. 2, c. 25.	The East India Company Act, 1784.	The whole Act.
26 Geo. 3, c. 57 .	The East India Company Act, 1786.	The whole Act.
9 Geo. 4, c. 74 .	The Criminal Law (India) Act, 1828.	Section fifty-six, except so far as in force in the Straits Settlements.
5 & 6 Geo. 5, c. 61.	The Government of India Act, 1915.	In section twenty-six, paragraph (d). In section eighty-seven, sub-sections (2), (3), (4) and (5). Section one hundred and sixteen.

## Rules for the conduct of Business of the Government of India.

[4th September, 1907.]

The following rules for the more convenient transaction of business in the Executive Council of the Governor General were made by the Governor General (Lord Minto) under s. 8 of the Indian Councils Act, 1861 (24 & 25 Vict., c. 67) on the 4th September, 1907, in supersession of all rules and orders previously made for that purpose. Modifications subsequently made have been incorporated with the rules as printed below.

The Act of 1861 has been repealed and re-enacted by the Government of India Act, 1915, and s. 8 of the former Act has been reproduced by s. 40 (2) of the latter Act, s. 180 (a) of which confirms the existing rules.

These rules have statutory force and cannot be altered by a resolution of the Executive Government. (See Legislative Department's U. O. No. 460 of 1905.) They are treated as confidential.

### RULES OF BUSINESS.

#### *Part I.—Apportionment of Business.*

Distribution  
of business  
among  
Departments.

1. The business of the Government of India shall be classified and distributed among the different Departments under the following heads, and each of the subjects hereinafter indicated shall, for the purposes of these rules, be deemed to belong to the Department to which it is allotted in the annexed list:—

#### (A) Home Department.

All business connected with the administration of—

- |   |   |
|---|---|
| (i) The European Vagrancy Act, 1874 (IX of 1874);   | } throughout British India and in Berar.  |
| (ii) The Indian Civil Service;  |   |
| (iii) Internal Politics;  | } throughout British India (except British Baluchistan and Ajmer-Merwara) and in Berar. |
| (iv) Escheats and intestate property;   |   |
| (v) Jails, Reformatory Schools, and Penal Settlements;  |   |
| (vi) Police (except as regards the Border Military Police in the North-West Frontier Province); |   |







- |   |   |  |
|---|---|--|
| Registration ;  | } | throughout British India (except British Baluchistan and Ajmer-Merwara) and in Berar.                                    |
| , The Naturalisation of aliens ;  |   |  |
| ( ) Law and Justice (except as regards petitions in jirga cases in the North-West Frontier Province) ;  | } |  |
| a) The Indian Arms Act, 1878 (XI of 1878) ;   |   |  |
| (xi) The Civil Medical Service ;  | } | throughout British India (except the North-West Frontier Province, British Baluchistan, and Ajmer-Merwara) and in Berar. |
| (xii) Judicial and administrative establishments ;  |   |  |
| (xiii) The nomination of Members of the Legislative Councils of the Lieutenant-Governors of Bihar and Orissa, the United Provinces of Agra and Oudh, the Punjab and Burma, and of the Chief Commissioners of the Central Provinces and Assam. |   |  |

The Lieutenant-Governorships of Bengal and Eastern Bengal and Assam have ceased to exist; the province of Bihar and Orissa under a Lieutenant-Governor has been recently created, and Assam has been placed under a Chief Commissioner and Legislative Councils have been constituted for it and for the Central Provinces. Clause (xiii) has been amended accordingly.

## (B) Department of Revenue and Agriculture.

All business throughout British India and in all places in Native States administered by the Governor General in Council connected with the administration of—

- (i) Forests and arboriculture ;
- (ii) Land Revenue (except as regards Jagirs in the North-West Frontier Province and British Baluchistan) ;
- (iii) Land Surveys ;
- (iv) Agriculture ;
- (v) The Civil Veterinary Administration ;
- (vi) Meteorology ; and
- (vii) Famine.

**(F) Army Department.**

All business (except Finance) connected with—

- (i) The Army (including the Volunteers) ;
- (ii) Cantonments and the Cantonment Magistrates' Department, throughout British India and, excepting political matters, in all places in Native States administered by the Governor General in Council ;
- (iii) Indian Medical Service ;
- (iv) The Royal Indian Marine ; and
- (v) Marine Surveys and dangers to navigation (corresponding with the hydrographic section of the Admiralty).

**(G) Department of Commerce and Industry.**

All business throughout British India, and in all places in Native States administered by the Governor General in Council, connected with—

- (i) Commerce, that is to say—
  - (a) Trade and Commerce ;
  - (b) Merchandise marks ;
  - (c) Merchant shipping ;
  - (d) Ports, port dues and pilotage ;
  - (e) The lighting of coasts ;
- (ii) Customs, including Cotton Duty ;
- (iii) Internal Land Trade ;
- (iv) Commercial Exhibition ;
- (v) Weights and Measures ;
- (vi) The Indian Factories Act, 1881 (XV of 1881)<sup>1</sup> ;
- (vii) Geology and Minerals ;
- (viii) Government Coal Mines and Iron Works ;
- (ix) Telegraph and Telephones ;
- (x) The Post Office ;
- (xi) The Indian Explosives Act, 1884 (IV of 1884) ;
- (xii) The Indian Petroleum Act, 1899 (VIII of 1899) ;

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<sup>1</sup> Act XV of 1881 has been repealed and re-enacted by the Indian Factories Act, 1911 (XII of 1911).

- (xiii) Emigration ;
- (xiv) Fisheries ;
- (xv) Inventions and Designs ;
- (xvi) Stationery and Printing ;
- \* \* \* \*
- (xviii) Statistics ;
- (xix) Salt, and

*Page 133—Rule 1 (G) Department of Commerce and Industry.—* After sub-head (xx) *add* the following sub-head :—“(xxi). Excise Opium, excluding the regulation of poppy cultivation and the administration of the Opium Department in the United Provinces.”

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### (H) Legislative Department.

All business connected with—

- (i) Legislation in the Council of the Governor General ;
- (ii) Legislation in Local Councils ;
- (iii) Rules for the Conduct of Business in Legislative Councils ;
- (iv) the Proceedings of Legislative Councils ;
- (v) the publication, translation and supply to Government officers and the public of Acts of the Governor General in Council and Regulations under the Government of India Act, 1870 ;
- (vi) the preparation and publication of Codes, Digests, Lists of Rules and Orders and other similar works ;

*Page 133—Rule 1 (H) Legislative Department—*After sub-head (viii) *add* the following sub-heads :—

- “(ix) unofficial references for opinion from other Departments ;
- (x) the duties of the Solicitor ~~with~~ the Government of India.

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the Government of India Act, 1915, *ante*. Regulations are now made under s. 71 of the latter Act.

Memorials and petitions regarding Acts belong to the Legislative Department—*See* Home Department's letter No. 22 Public—996-1001, dated the 24th May, 1878. *See* also notes to rr. 16, 17 and 18, *post*.

### (I) Railway Department.

All business connected with—

- (i) Railway questions ;

*Page 133—Rule 1 (I) Railway Department.—*Between sub-head (ii) and the proviso insert the following sub-head :—

- “(iii) Ropeways for the public carriage of goods and passen-

Provided that nothing in these rules shall apply to any business which the Railway Board are competent to dispose of on their own authority and without reference to the Government of India.

### (J) Department of Education.

All business connected with the administration of—

- |   |   |   |
|---|---|---|
| (i) Education (except as regards Chiefs' Colleges) ;  | } | throughout British India (except British Baluchistan and Ajmer-Merwara) and in Berar.                         |
| (ii) Examinations (except as regards Pushtu, Baluchi and any other frontier language in the North-West Frontier Province) ; |   |   |
| (iii) Municipalities ;  |   |   |
| (iv) Local Boards ;   |   |   |
| (v) Public health and sanitation :  |   |   |
| (vi) Records office, and preservation and management of the public records ;  | } |   |
| (vii) Imperial Library ;  |   |   |
| (viii) Books and Publications ;   |   |   |
| (ix) Copyright ;  |   |   |
| (x) Oriental Languages ;  | } | throughout British India ; and in Berar.  |
| (xi) Archæology and Epigraphy ;   |   |   |
| (xii) Ecclesiastical matters and the Ecclesiastical Service ;   |   |   |
| (xiii) The Census ;   |   |   |
| (xiv) Gazetteers.   | } | throughout British India, and in all places in Native States administered by the Governor General in Council. |
| (xv) Arts and Museums.  |   |   |

The unspecified heads of work referred to in entry 14 in the statement annexed to the Home Department Resolution Nos. 5475—5507, dated the 9th December 1910, regarding the constitution of the Department of Education, as having been transferred from the Home Department to the Department of Education are the following :—

- (1) Spelling of Indian names.
- (2) Congresses of Orientalists.

- (3) Ethnography.
- (4) Zoological gardens.
- (5) Commemoration of notable buildings.
- (6) Linguistic Survey.
- (H. D. Circular letter to Local Governments, etc., Nos. 618—627, dated the 11th March 1911.)
- (7) Smoke-nuisances (H. D. circular letter to Local Govts., etc., Nos. 1774 C.—1785 C., dated the 25th March 1915).

### (K) Indian Munitions Board.

All business connected with—

- (i) The control of supply of material (other than food or forage) for all Government purposes, civil or military.
- (ii) The supply of war materials to, or on behalf of, His Majesty's Government, other than those furnished by Departments under the Army Department.
- (iii) Disposal of applications for priority certificates.
- (iv) The establishment and maintenance of new Government factories for war supplies.
- (v) The control of transactions by the public in respect of such articles of actual or potential military value as may be mutually agreed upon by the Indian Munitions Board and the Department of Commerce and Industry.

This head was inserted in August, 1917, in connection with the constitution of the Indian Munitions Board. Certain consequential amendments were at the same time made in other rules.

As to the administration and working of the Army Clothing Department in India, *see* B., Nov. 1917, No. 1. As to the administrative and executive control of the Indian Ordnance Factories, *see* Army Instructions No. 16, dated 18th January, 1918.

2. Subject to the provisions of rule 1, the business of the different Departments shall, for the purposes of the first perusal of papers and of the initiation of orders thereon, be allotted to the Governor General and the Members of Council in such manner as the Governor General may, from time to time, direct.

Allotment of business to Governor General and Members.

Under existing arrangements one Ordinary Member of Council is in charge of the Department of Revenue and Agriculture and the Public Works Department, and another Ordinary Member is in charge of the Department of Commerce and Industry and the Railway Department; the Home Department, the Finance Department, the Legislative Department and the Department of Education are each allotted to one Ordinary Member; the Commander-in-Chief in the capacity of Extraordinary Member is at the head of the Army Department, and the Governor General himself takes the portfolio of the Foreign and Political Department,

*Part II.—Disposal of Business.*

Cases ordinarily to be submitted to Member in charge.

3. Save as otherwise provided by rules 5(2), 6 and 7, cases shall ordinarily be submitted by the Secretary in the Department to which the subject belongs, for the purposes of the first perusal of papers and of the initiation of orders thereon, to the Member in charge of that Department.

Cases of minor importance.

4. Cases of minor importance shall ordinarily be disposed of by, or under the authority of, the Member in charge of the Department to which the subject belongs.

The words "under the authority of" permit of the disposal of the least important cases by Secretaries. See in this connection, the footnote to rule 12 *post*.

Cases of major importance.

5. (1) Any case which is, in the opinion of the Member in charge of the Department to which the subject belongs, of major importance, shall be submitted, with the orders proposed by that Member to the Governor General for opinion.

(2) Any case which is of special importance and urgency may be submitted by the Secretary in the Department to which the subject belongs, direct to the Governor General, who may either pass orders on it himself, or send it for disposal to the Member in charge of that Department:

Provided that, when a case is so submitted to the Governor General, the Member in charge shall be informed of the fact by the Secretary.

A still wider power of reference to the Governor General is conferred by rule 6 below on Secretaries, as to whose position, etc., see the footnote to rule 12, *post*.

Submission of any case to Governor General.

6. Any case may, at any stage, if the Secretary in the Department to which the subject belongs thinks fit, be submitted by him to the Governor General.

See also rule 5 (2) above as to the submission of cases of special importance and urgency to the Governor General in the first instance instead of to the Member in charge.

Powers and duties of Secretary in the Army Department.

7. In order to enable the Secretary to the Government of India in the Army Department to discharge the duties imposed upon him by rules 5 (2), 6, 11 and 41—

- (1) he shall be a Member of the Advisory Council and of the Mobilization Committee ;
- (2) all matters entered in a schedule approved by the Governor General shall be referred to him before orders are issued ;
- (3) he shall be entitled at any stage of the discussion of any subject assigned to the Army Department—
  - (a) to call for the papers ;

8. The Secretary to the Government of India in the Army Department shall also, for the purposes of sub-section 4, section 26 of the Regimental Debts Act, 1893 (56 Vict., c. 5), and the regulations made thereunder, be Secretary to the Government of India in the Military Department.

With reference to the position of the Secretary in the Army Department, *see* notes in Leg. Dep. U. O. 903 of 1905 and the Secretary of State's De-patch, Military (Secret) No. 18 of the 9th February 1906.—Army Department B Proceedings, July 1906, No. 1354 (included in above).

III of 1876. 9. (1) Where under section 13, clause (c) of the Andaman and Nicobar Islands Regulation, 1376, a sentence of death passed by the Court of Session at Port Blair is submitted for the confirmation of the Governor General in Council, the order proposed by the Member in charge of the Home Department shall, in the first instance, be referred for opinion to the Member in charge of the Legislative Department.

Confirmation of capital sentences passed in Andamans

(2) If both the Members aforesaid are in agreement as to the order which should be passed, such order shall be carried out, unless, for any special reason or under any other rule, a reference to the Governor General is considered necessary.

(3) If the two Members aforesaid are not in agreement, the case shall be submitted to the Governor General for orders.

Section 13(c) of Reg. III of 1876 referred to, as amended by s. 3 of the Andaman and Nicobar Islands Regulation, 1884 (I of 1884), is as follows :—

“13. The Code of Criminal Procedure (Act X of 1882) shall be subject to the following modifications :—

\* \* \* \* \*

(c) The functions of the High Court under Chapter XXXII of the Code (Of the submission of sentences for confirmation) shall be discharged by the Governor General in Council.

\* \* \* \* \*

For the Code of Criminal Procedure here referred to, see now the Code of Criminal Procedure, 1898 (Act V of 1898).

In exercise of the power conferred on the Governor-General by section 40, subsection (2) of the Government of India Act, I have made the following amendment in the rules and orders for the transaction of business in the Executive Council of the Governor-General, Namely :-

Rule 10 -- Add the following --

Provided that it shall not be necessary to obtain such consent in cases in which it ~~is~~ is proposed to create or modify a ~~new~~ recommendation of a local







shall not be necessary for any Department to make a previous reference to the Finance Department before issuing orders; but every order so issued shall have the sanction in writing of the Governor General, and be communicated to the Finance Department without delay.

- (b) The Army Department may, without making a previous reference to the Finance Department, issue orders sanctioning any expenditure which—

- (i) does not require the sanction of the Secretary of State in Council;
- (ii) does not involve any outlay in excess of the total sanctioned Budget provision, under any major head of account; and
- (iii) does not involve re-appropriations from any one or more grants or minor heads of account to any other such grants or minor heads exceeding in the aggregate three lakhs of rupees in any one financial year.

- (c) The Department of Commerce and Industry may, without making a previous reference to the Finance Department, issue orders, in the case of the Postal and Telegraph Departments, sanctioning any expenditure which—

- (i) does not require the sanction of the Secretary of State in Council;
- (ii) does not involve outlay in excess of the Budget grant concerned or a re-appropriation from one major head to another.

- (d) The Public Works Department may, without making a previous reference to the Finance Department, issue orders sanctioning any expenditure on (1) Civil Works, and (2) Irrigation Works, which—

- (i) does not require the sanction of the Secretary of State in Council;
- (ii) does not involve outlay in excess of the Budget grant concerned or a re-appropriation from one major head to another.

- (e) The Railway Department may, without making a previous reference to the Finance Department,

issue orders, in the case of the maintenance and working expenses of Railways, sanctioning any expenditure which—

- (i) does not require the sanction of the Secretary of State in Council ;
- (ii) does not involve outlay in excess of the Budget grant concerned.

(3) Nothing in clauses (b), (c), (d) and (e) of sub-rule (2) shall be deemed to authorize the contravention of any rule or order of the Finance Department for the time being in force, or the introduction of any new principle or practice likely to lead to increase of expense.

The Postal and Telegraph Departments referred to in clause (e) have now been combined into one Department.

14. (1) Proposals and questions affecting the pay and allowances of any officer on any Secretariat Establishment of the Government of India, or the application of financial rules to any such officer, or respecting any expenditure by any such Secretariat, shall be referred to the Finance Department by official correspondence, and not by unofficial reference. References to be made in certain cases.

(2) In every such case, the referring Department shall, for the purposes of rule 11, sub-rule (2), be deemed to be the Department to which the subject belongs.

(3) This rule shall not apply in the case of the Indian Munitions Board.

15. Unless the Governor General otherwise directs, no proposal affecting any subject, which belongs to the Finance Department, shall be brought before a meeting of Council or be circulated to the Members, unless it has originated in, or has been referred to and considered by, that Department. Proposals affecting subjects belonging to the Finance Department.

#### *Part IV.—Consulting the Legislative Department.*

16. Where it is proposed in an Executive Department to make or to sanction any rules in the exercise of a statutory power conferred on the Governor General in Council, the draft of the rules shall, before orders making or sanctioning the same are issued, be referred to the Legislative Department for consideration. Legislative Department to be consulted as to drafts of statutory rules.

In connection with this rule, see Home Department's letter to Local Governments, No. 1—137-147, dated the 24th January, 1877, and No. 12—980-989, dated the 13th July, 1882. Under these orders all statutory rules requiring "the previous sanction of the Governor General in Council" should, before submission by a Local Government for such sanction, be referred to the local Legal Remembrancer, Government Advocate or other competent legal adviser, for advice as to their legality, form, wording and arrangement; and, when they are submitted, it should be distinctly stated that they have been settled after such consultation.

Rules which require such previous sanction should be examined by the Leg. Dept. to see that they are *intra vires*, but that Dept. is not responsible

for the actual drafting of the rules, unless it involves a question of their validity—see Leg. Dept. U. O. Nos. 418 of 1913 and 348 of 1915.

Rules made “subject to the control of the Governor General in Council” are usually sent to the Legislative Department for examination before issue. But such cases certainly do not fall under this rule, and it is doubtful whether they can properly be brought under r. 17 (d) below. In practice, however, the Legislative Department deals with them, but in doing so, it confines itself to a cursory examination, avoids the details of drafting, and passes what is proposed as it stands, unless there appears to be in it anything actually *ultra vires* or otherwise illegal. See Leg. Dept. U. O. Nos. 740 of 1898 and 100 of 1900.

As to the functions of the Legislative Department in connection with legislation, see rr. 23—36 below, and, in particular, the note to r. 23.

Page 142—Rule 17, Substitute the following for rule 17:—

“17. (1) The Executive Departments may consult the Legislative Department on the following subjects, namely:—

- (a) the construction of Statutes, Acts and Regulations;
- (b) questions on any general legal principle arising out of any case;
- (c) proposed amendments of the law; and
- (d) notifications to be issued under any enactment:

Provided that the Legislative Department shall not be asked to advise on cases on which the Advocate General of Bengal has advised.

- (2) The Solicitor's Branch of the Legislative Department may also be consulted in other cases where either the opinion of the Advocate General of Bengal is desired or the advice of the Solicitor with the Government of India on a legal question is considered necessary.”

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ment Advocate could advise in the ordinary course of his duties, and as to which there is no special reason for referring to the Legislative Department.

It was pointed out by the Hon'ble Mr. (Sir H.) Erle Richards that where the advice of the Legislative Department had already been taken on any question, there was, according to practice, no right to consult the Law Officers on the question; the objection was waived, but it was pointed out that the case should not be treated as a precedent to justify any future departure from practice.—See Leg. Dept U. O. No. 73 of 1907. *Contra* Lord Lansdowne's ruling dated the 28th June 1893 in which however Sir A. Miller refused to acquiesce, Leg. Dept. U. O. No. 72 of 1893 and the cases included therein. See also U. O. No. 739 of 1911, in which Leg. Dept. objected to a reference to the Advocate-General of a matter on which that Dept. has already given its opinion.

As to clause (c), see the Office Memoranda quoted in the notes to r. 28, *post*.

With reference to clause (d), Local Governments have been directed to submit with draft notifications proposed under s. 3 of the Scheduled Districts Act, 1874 (XIV of 1874), specific information on certain points in a prescribed form. See Home Department's letters No. 169 (Judicial), dated the

30th January, 1896, to the Government of Madras, and Nos. 1 (Judicial)—284-290, dated the 21st February, 1896, to the other Local Governments.

The object of the first proviso is to secure that, where there is any chance of litigation, the Law Officers (who must have charge of the matter if and when it is brought into Court) should be consulted at the earliest possible stage. Therefore where, as in the case of s. 39 of the Income-tax Act, 1886 (II of 1886), resort to the Courts is barred by law, the Legislative Department may, *prima facie*, be consulted. But the very fact that the ordinary tribunals cannot be appealed to sometimes renders it the more desirable that the Government should not, without the advice of the regular Law Officers, give a decision adverse to an individual or to the public at large. Cases involving claims to exemption or non-liability under the Act just referred to are instances of this, and had better be regarded as falling under the third proviso. *See* Leg. Dep. U. O. No. 762 of 1900.

An Advocate-General is appointed by Warrant under the Royal Sign Manual, and officiating appointments are, in the case of Bengal, made by the Governor General in Council, and in other cases, by the Local Govt.—*see* s. 114 of the Govt. of India Act, 1915, *ante*. The words “any Government Advocate” do not cover a Legal Remembrancer in a Province in which there is an Advocate-General—*see* Leg. Dep. U. O. No. 883 of 1903.

The rules do not prohibit the Law Member as such from advising on a matter on which the opinion of the Advocate-General has been taken:—*see* Leg. Dep. U. O. No. 78 of 1910.

The Legislative Department should not advise on a question which in substance relates to a particular transaction—*see* Leg. Dept. U. O. No. 110 of 1907.

It is not within the province of the Leg. Dept. to advise on matters of merely private rights; the Solicitor or the Law Officers should be consulted in such cases—Leg. Dept. U. O. 355 of 1914.

As regards the position of the Legislative Department with reference to the examination of draft notifications—*see* Leg. Dept. U. O. Nos. 761 of 1908, and 121 of 1909.

18. Where an Executive Department consults the Legis- Statement  
Page 143—Rule 18, Substitute the following for rule 18 :—

“18. Where an Executive Department consults the Legislative  
Statement of case.  
Department under rule 17 (1) (a)  
to (d), it shall, except in regard  
to notifications to be issued under enactments, state, with  
as much precision as possible, the facts of the case and the  
point or points on which the advice of the Legislative  
Department is desired.

The same conditions shall apply to all cases in which the Soli-  
citor’s Branch is consulted under rule 17 (2).”

sufficient to form a quorum—*see* s. 39 of the Government of India Act, 1915, *ante*. For cases where the Governor General is absent, *see* ss. 42 and 43 of the Govt. of India Act, 1915. As to the circulation of Council cases, *see* rules 21 to 23 of the *Secretariat Instructions*, *post*.

*Adjournment of Meetings of Council.*—Section 38 of the East India Company Act, 1793 (33 Geo. 3, c. 52), expressly empowered the Governor General to postpone or adjourn the discussion of matters brought up before the Council. That section was practically superseded by s. 8 of the Indian Councils Act, 1861 (24 & 25 Vict., c. 67), which has been re-enacted in s. 40 (2) of the Govt. of India Act, 1915, *ante* giving power to make rules of procedure for the Council. There is, however, no provision in the rules such as that in r. 6 of the *Rules of Legislative Business*, *post*, for adjourning meetings, and, while the need for one has, in practice, never been felt, it is clear that such a provision could be made under s. 40 (2) of the Act of 1915.



(b) every report of a Select Committee on a Bill shall, before it is taken into consideration by the Legislative Council, be circulated to the Hon'ble Members."

With the same object a note of the legislative work in prospect is prepared half-yearly, circulated for the information of the Executive Council, and, if necessary, brought up at a meeting. See the introductory note to Pt. II of the *Rules of Legislative Business, post*.

It is only very occasionally now that Hon'ble Members draw attention to matters connected with legislation at meetings which have not been summoned specially for the purpose of considering such legislation (U. O. No. 80 of 1910; Mr. (Sir John) Macpherson's note of 9th March, 1910).

20. When under the preceding rules a case has been circulated to Members of Council and there is substantial agreement among them, the Governor General may direct that the case need not be brought before a meeting of Council.

This rule was substituted for the original ¶ 20 in March 1919.

21. In the case of a proposal referred to the Finance Department under rule 13 or rule 15, if the Member in charge of that Department does not concur with the Member in charge of the referring Department, and the Governor General concurs with the Member in charge of the Finance Department, the papers shall be circulated to the Members or be brought before a meeting of Council at once, as the Governor General shall direct: but no orders shall be issued on the proposal, unless the Governor General otherwise directs, until the instructions of the Secretary of State in Council have been received thereon.

Bringing before Council of cases in which Finance Member does not concur with another Member.

22. (1) When a case is brought before a meeting of Council, the Secretary in the Department to which the subject belongs, and if the case concerns another Department, the Secretary in that Department, if specially required to do so, shall attend and, before the case is taken into consideration, the Secretary in the Department to which the subject belongs, or such other Secretary, shall state briefly the point or points on which a decision is required, and if he thinks fit, or if the notes on the case have not been seen by all the Members, the complete history of the case recapitulating in order the substance of the opinion (if any) given thereon by each Member who has examined it.

Submission of cases at meetings of Council and orders thereat.

(2) The Governor General will then request the Member in charge of the Department to which the subject belongs, to make such observations as he thinks fit on the point or points thus submitted for decision.

(3) When a decision upon the point or points under discussion has been arrived at, the Secretary in the Department to which the subject belongs shall take down in writing and read out the order proposed, and such order shall, after its terms have been finally approved, be initialled by the Governor General and placed with the notes of the case.



Subject to the power of the Governor General under sub-sections (2), (3) and (4) of s. 41 of the Government of India Act, 1915, *ante*, to overrule the Executive Council, all questions are under sub-section (1) of that section, decided by the votes of the majority of members present, the Governor General having a second or casting vote in cases where there is an equality of votes. For cases where the Governor General is absent, *see* ss. 42 and 43 of the Act of 1915, *ante*. The order is called an "Order in Council."

*Part VI.—Cases involving Legislation in the Council of the Governor General.*

Duties and functions of Legislative Department in respect of legislation.

23. Save as otherwise provided by rule 25, the Legislative Department is not, in respect of legislation, an originating or initiating Department, and its proper function is to put into technical shape projects of law of which the policy has been affirmed elsewhere.

The Legislative Department, however, maintains a register in which any proposal for amending legislation in the Governor General's Council is noted at the instance of the Executive Department concerned, *but not otherwise*. *See* Leg. Dept. Unofficial Memorandum No. 328—333, dated the 24th September, 1895.

The functions of the Legislative Department are also advisory—*see* rr. 16—18 above. Moreover, all Acts of Parliament are examined, as soon as copies of them are received, in the Legislative Department, such of them as extend to India are published without delay in the *Gazette of India*, and, under a recent arrangement—*see* Military Department's U. O. No. 168-C, dated the 17th July, 1903, and Legislative Department's Office Order, dated the 18th idem—the attention of the proper Executive Department is drawn to any Statute which appears to concern it or possibly to call for action on its part.

Procedure in cases involving legislation.

24. (1) Save as aforesaid, every proposal, to initiate legislation in the Council of the Governor General, shall be considered in, and, if necessary, transferred to, the Executive Department to which the subject belongs, and there the necessity for legislation and all points connected therewith, except the technical details of the Bill (if any) to be introduced, shall be discussed and settled.

(2) If the Member in charge is of opinion that legislation is expedient, or that the proposal should be referred to Local Governments for opinion, the case shall be submitted to the Governor General and be dealt with in the same manner as business under Part V.

(3) If legislation is decided upon, the papers shall be sent to the Legislative Department with an Official Memorandum indicating with sufficient precision the lines on which it has been decided to legislate, and requesting the Legislative Department to take steps for the introduction in Council of the requisite Bill.

(4) After the issue of an Official Memorandum as aforesaid, all correspondence regarding the legislation decided upon shall be conducted in the Legislative Department, to

which all petitions and communications in respect thereof shall, if necessary, be transferred, copies of all such correspondence being, from time to time, sent by that Department to the Executive Department to which the subject belongs for record.

The Council of the Governor General for purposes of legislation is now termed "the Indian Legislative Council"—see s. 63 of the Government of India Act, 1915, *ante*.

When a Member has decided that the Secretary of State should be addressed on the subject of proposed legislation,—see r. 26 below,—then would seem to be the proper time for the submission of the papers to the Governor General for orders under sub-rule (2) read with the first proviso to r. 19.—See Legislative Department's U. O. No. 772 of 1898 and Unofficial Memorandum No. 218—222, dated the 11th August, 1899. See also Legislative Department U. O. No. 80 of 1910.

Such an Official Memorandum as is prescribed by sub-rule (3) should not, except when the Secretary in the Department to which the subject belongs otherwise directs, be issued until it has been referred unofficially to, and accepted as sufficiently precise by, the Legislative Department.

It is often convenient to refer to the Legislative Department unofficially in the first instance, and to ask that Department to prepare a draft on the notes in the case or after personal discussion with the Executive Department concerned. This course is, indeed, becoming more and more usual, because it is most useful, in consulting the Secretary of State as to legislation, to forward a draft of the Bill which it is proposed to introduce. When a draft has been unofficially settled in this manner, the Official Memorandum simply forwards a copy of it and of the explanatory correspondence (if any), and requests that "the necessary steps be taken for the introduction of such a Bill in the Indian Legislative Council."

But although the Legislative Department, as a matter of fact, frequently undertakes the preparation of draft Bills on unofficial references before legislation is actually decided upon, it should not be asked to prepare a draft Bill until points of substance are settled (Unofficial No. 80 of 1910), and the Department should be previously consulted on the question whether in any particular case this should be done. Where the proposal for legislation is simple and the form in which it will be given effect to will be simple, the Legislative Department should not prepare a Bill before legislation is actually decided on, whereas in a case of a complicated proposal which might well involve difficulties of drafting and be better considered in Bill form, there would be arguments in favour of a contrary course—see Leg. Dept. U. O. Nos. 303 of 1911, 215 of 1911 and 205 of 1912.

The following rules on the subject of the duties of the Legislative Department regarding the preparation of Bills were formulated by Mr. (Sir John) Macpherson and accepted by the Home Department:—

"1. An Office Memorandum asking us to prepare a Bill should never be sent until all the procedure necessary before legislation can be undertaken in the Council of the Governor General has been observed, *i.e.*, until the matter has been dealt with as required by rule 24 read with rule 19 and rule 26 of the Rules of Business.

"2. A proposal for legislation should not be submitted to the Governor General for orders under rule 24 until after an unofficial reference has been made to this Department as to the necessity or expediency from the legal point of view of the proposed legislation.

"3. If in any case it appears to the Executive Department desirable that a draft Bill should be prepared by this Department for circulation to Local Governments, this Department should be consulted unofficially before a request is made for the preparation of the Bill"—Leg. Dept. U. O. 302 of 1911.

Power of Legislative Department to initiate certain legislation.

25. (1) Nothing in rules 23 and 24 shall apply to measures for the codification of the substantive law<sup>1</sup> or for the consolidation, pure and simple, of existing enactments, or to legislation of a formal character, such as that involved in "Repealing and Amending" and "Short Titles" Bills.

(2) Any such legislation as aforesaid may be initiated in the Legislative Department, which shall, before publication, transmit a copy of the draft Bill proposed by it, together with the Statement of Objects and Reasons, to the Secretary of State for information, and shall also send a copy to the Executive Department to which the subject belongs, for consideration as an administrative measure.

(3) The Executive Department aforesaid shall forthwith make such inquiries as it thinks fit, informing all Local Governments and others consulted that the matter is urgent, and sending the Legislative Department a copy of every communication received by it on the subject.

(4) The opinion of the Executive Department aforesaid shall, before the expiration of six months from the receipt in it of the draft Bill, be sent to the Legislative Department, and the Legislative Department may, on receiving such opinion or on the expiration of the period aforesaid without the receipt of any such opinion, submit the Bill to the Governor General for orders and, if the Governor General so directs, take steps for its introduction in Council.

Proposals for legislation to be ordinarily reported to Secretary of State before introduction of Bills.

26. (1) Save as hereinafter provided by this rule, every proposal for legislation in the Council of the Governor General which the Government of India desires to initiate, shall be reported to the Secretary of State, and the necessary Bill shall not be introduced until the Secretary of State has had an opportunity of communicating with the Government of India on this subject.

(2) The following shall be excepted from the operation of this rule, namely :—

- (a) consolidation Bills, pure and simple ;
- (b) cases in which the legislation proposed is, in the opinion of the Government of India, of a purely formal or unimportant character ; and
- (c) cases in which the legislation proposed cannot, in the opinion of the Government of India, be

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<sup>1</sup>A scheme for the codification, by the Legislative Department, of the substantive law was settled in the course of the correspondence resting with the Government of India's Despatch to the Secretary of State No. 34 (Legislative), dated the 10th May, 1877—See *Selection of Papers relating to the Constitution and Functions of the Indian Legislative Councils*, at pages 232—236.

without serious evil, delayed in order to admit of a prior report to the Secretary of State.

For purposes of legislation the Council of the Governor General is now termed "the Indian Legislative Council"—see s. 63 of the Government of India Act, 1915, *ante*.

In connection with sub-rule (1), see the notes to r. 24 (2) above. As a matter of language, this sub-rule authorises introduction after a reasonable interval has elapsed, whether the measure is merely reported to the Secretary of State or submitted expressly for his approval. But in cases of the latter kind, it is usual to await the Secretary of State's reply, and the following would seem to be a good working rule:—

In reporting a Bill to the Secretary of State, it should be made clear whether the measure is submitted for *approval*, or whether it is merely forwarded for *information* with the intention of introducing it in Council on or after a certain date, which should, of course, be fixed far enough ahead to admit of a reply, at least by telegram, reaching India first. In the former case, a reply should be awaited: in the latter, the Bill may be introduced as soon as the date indicated has arrived, unless orders to the contrary have in the meantime been received—see Leg. Dept. U. O. 417½ of 1902; 147 of 1906; paragraph 4 of Mr. (Sir John) Macpherson's note, dated 3rd July, 1906.

The Secretary of State having sanctioned the universalization of the Rs. 10, and Rs. 50 notes and the taking power to universalize the Rs. 100 note in future, it was held that a Bill taking power for the universalization of all notes could be introduced without further reference to the Secretary of State, who would have an opportunity of taking exception to the general provision when the Bill is reported to him after introduction.—See Leg. Dept. U. O. 409 of 1909. After a proposal to introduce a Central Provinces Excise Bill with copy of the draft Bill had been reported to the Secretary of State, various alterations of substance were made in the draft; it was held that if no change of principle was involved, it would be sufficient to obtain his assent to the changes of substance without sending to him the revised Bill: Leg. Dept. U. O. 200 of 1911.

In the case of the Code of Criminal Procedure (Amendment) Bill which, after introduction in Council in the usual way, was referred to a Special Committee and revised by that Committee, it was decided as a matter of convenience to re-introduce the revised Bill in Council in place of the old Bill. The revised Bill was so introduced in September, 1917, and it was held that it need not be reported to the Secretary of State until after introduction, as it was not an initiation of legislation within the meaning of rule 26.

Rule 23 of the *Rules of Legislative Business*, *post*, empowers the Governor General to order the publication of a Bill before it is mentioned in the Legislative Council at all; but that power should not be used when a measure has been reported to the India Office under this rule and before the approval, express or tacit, of the Secretary of State has been obtained thereto—see Leg. Dept. Register No. 1165 of 1903.

27. (1) Whenever an Additional Member gives notice, under rule 16 of the rules for the Conduct of Legislative Business in the Council of the Governor General, of his desire to move for leave to introduce a Bill in accordance with the provisions of section 19 of the Indian Councils Act, 1861,<sup>1</sup> the Legislative Department shall forthwith send a copy of the notice, together with a copy of the Bill and Statement of Objects and Reasons (if any), to the Executive Department to which the subject belongs, and the matter shall be dealt with in the same manner as business under Part V.

Additional  
Members'  
Bills.

<sup>1</sup> See now s. 67 of the Government of India Act, 1915, *ante*.

(2) Whenever an Additional Member introduces a Bill in Council, the Legislative Department shall send a copy of the Bill, together with the Statement of Objects and Reasons, to the Executive Department to which the subject belongs, and such Bill shall be dealt with in the same manner as business under Part V, unless it accompanied the notice referred to in sub-rule (1) of this rule and has already been dealt with thereunder.

Rule 16 of the *Rules of Legislative Business*, *post*, was in February, 1917, so amended as to require at least one month's notice of a motion for leave to introduce a Bill by any Member, thus giving the Executive Department concerned sufficient time to examine the Bill. The amended rule at the same time requires that a copy of the Bill, together with a full Statement of Objects and Reasons, shall be sent together with the notice to the Secretary, Legislative Department.

*Part VII.—Cases involving Legislation in Local Councils.*

See the *Instructions to Local Governments regarding Legislation in Local Councils*, *post*, and the notes thereto.

Legislative  
Department  
to deal with  
communications regard-  
ing draft  
Bills, etc.

28. (1) Every communication made by a Local Government to the Government of India asking for leave to introduce a Bill, or regarding a Bill which has been introduced in the Local Council, or submitting a law for the assent of the Governor General under section 40<sup>1</sup> of the Indian Councils Act, 1861, shall be addressed to the Secretary to the Government of India in the Legislative Department, and, if such a communication is received in any other Department, that Department shall at once transfer it to the Legislative Department. 24 & 25 Vict.,  
c. 67.

(2) Nothing in this rule shall be construed to apply to any correspondence or communication regarding a proposal for legislation in a Local Council, unless and until the stage is reached at which leave to introduce a Bill is asked for. All correspondence before that stage shall be conducted in, and, if necessary, transferred to, the Executive Department to which the subject belongs.

It follows from sub-rule (1) that orders issued by the Government of India, *suo motu*, regarding bills which have been introduced in Local Councils should emanate from the Legislative Department. See Leg. Dept., B. Pro., February, 1899, Nos. 60—62.

Apart from the special instructions issued to Local Governments in connection with this rule, which was then numbered 26, the following further orders have been passed with reference to it :—

*Home Department's Office Memorandum No. 1544—1548, dated the 22nd November, 1901, as amended by Home Department Office Memorandum No. 266—273, dated the 23rd February 1910.*

“It not infrequently happens that a Local Government, in addressing an Executive Department of the Government of India as to the policy of legis-

<sup>1</sup> See now s. 81 (3) of the Government of India Act, 1915, *ante*.

lation proposed by it, forwards its proposal in the form of a draft Bill. In such a case, rule 26 (*now rule 28*) of the *Rules of Business* requires the Executive Department, even although it approves of the project practically as submitted, to communicate again with the Local Government and direct it to re-submit the draft to the Legislative Department for report to the Secretary of State and for such statutory sanction as may be necessary. The needless correspondence and delay thus involved may, it is thought, be dispensed with in future, and the undersigned is accordingly directed to say that, when a Local Government submits to an Executive Department of the Government of India a proposal for legislation in the form of a draft Bill, the Executive Department should examine the proposal, and if it is able to accept it, either in its entirety or subject to trifling reservations, should transfer the draft to the Legislative Department, accompanied (if necessary) by an unofficial note expressing its views. The Legislative Department should then deal with the measure as if it had been received in that Department direct from the Local Government in accordance with sub-rules (1) and (2) of rule 26.

"2. The undersigned is also to take the opportunity of suggesting that an Executive Department, when formally transferring to the Legislative Department, under sub-rule (1) of rule 26, a communication which obviously cannot be disposed of without an unofficial reference to the former Department, should send at the same time unofficially a note expressing its own opinion.

*Home Department's Office Memorandum No. 269—273, dated the 17th February, 1902 :—*

"In amplification of paragraph 3 of Home Department Office Memorandum No. 1544-1548, dated the 22nd November, 1901, the undersigned is directed to explain that it is desired that Executive Departments should furnish the Legislative Department with advance copies of all communications received from Local Governments and Administrations which involve legislation, whether in the Local Councils or in the Council of the Governor General."

The deviation from the rules permitted by Home Department Office Memorandum, dated 22nd November, 1901, quoted above, resulted in a further change in the procedure as regards Bengal, Madras and Bombay Bills. See note under r. 30, *post*.

A proposal for legislation submitted in the form of a draft Bill by a Local Government to an Executive Department of the Government of India should not be transferred to the Legislative Department when the Executive Department has alterations on matters of substance to suggest to the Local Government. The proper procedure in such cases would be for the Executive Department to communicate with the Local Government, who should then apply in the ordinary way for sanction to introduce the Bill : Leg. Dept., U. O. 714 of 1911 and 645 of 1912.

Although it is not till the stage indicated in sub-rule (3) of r. 30 *post* is reached that the orders of the Governor General are required expressly by these rules, still an Executive Department would do well to submit the papers to the Governor General for approval before instructing a Local Government to proceed to legislation. See Leg. Dept., A. Proceedings, October, 1899, Nos. 26—35, and Unofficial Memorandum Nos. 162—167, dated the 15th June 1899.

24 & 25 Vict.,  
c. 67.  
55 & 56 Vict.,  
c. 14.

29. Where a draft Bill submitted by a Local Government requires the previous sanction of the Governor General under section 43 of the Indian Councils Act, 1861,<sup>1</sup> or section 5 of the Indian Councils Act, 1892,<sup>1</sup> the Legislative Department shall refer it for consideration as an administrative measure to the Executive Department to which the subject belongs,

Reference to Executive Department's before previous sanction is given.

<sup>1</sup> See now s. 79 of the Government of India Act, 1915, *ante*.

and simultaneously to any other Department concerned, before any orders are issued.

This is sub-rule (2) of rule 29 as originally made; sub-rule (1) which required that all penal clauses in every draft Bill submitted by a Local Government should be referred to the Home Dept. has been cancelled: *see* Home Dept. O. M. Nos. 4897-4807, dated 28th November, 1911—Home Dept. Pros., Public A., December, 1911, Nos. 67—68.

In important cases, however, penal clauses would still be referred to the Home Department for consideration although they occur in a Bill the subject of which does not belong to that Department. *See* Leg. Dept. notes on the Bombay Abkari Act, 1875 (Amendment) Bill: O. D. Nos. 211 and 1216 of 1912. *See* notes to s. 79 (d) of the Government of India Act, 1915, *ante*.

Procedure in case of draft Bill reported to Secretary of State before introduction.

30. (1) When a draft Bill is received from a Local Government, other than the Government of Madras, Bombay or Bengal, for report to the Secretary of State, the Legislative Department shall forward it forthwith, without any discussion of its merits, with a letter to the Under Secretary of State for India, a copy of which shall be forwarded to the Local Government for information, and shall then refer the Bill for consideration as an administrative measure to the Executive Department to which the subject belongs, and simultaneously to any other Department concerned, and shall also itself examine it, before any orders are issued.

(2) When a draft Bill is reported to the Secretary of State by the Government of Madras, Bombay or Bengal, and a copy of the Local Government's despatch to the Secretary of State is received, the Legislative Department shall keep a record of the date of the despatch, and shall then refer the draft for consideration as an administrative measure to the Executive Department to which the subject belongs, and simultaneously to any other Department concerned, and shall also itself examine it, before any orders are issued.

(3) As soon as possible and before the expiration of two months from the date of the despatch referred to in sub-section (1) or sub-section (2), as the case may be, the Legislative Department shall submit the papers to the Governor General for orders as to whether any, and (if any) what, communication shall be addressed to the Local Government regarding it. Such communication (if any) shall be issued so as to reach the Local Government before the expiration of the two months aforesaid.

(4) If before the issue of such a communication as aforesaid a despatch on the subject has been received from the Secretary of State, the contents thereof shall be included in the communication to the Local Government; if no despatch has been received, the fact shall be stated in the communication to the Local Government, and it shall further be intimated that the subsequent receipt by the Government of India of any orders from the Secretary of State before the

expiration of the two months aforesaid will be notified (by telegram, if necessary) to the Local Government.

*Explanation.*—The examination of a draft Bill by the Legislative Department under this and the following rules shall ordinarily be confined to general legal principles (including the consideration of the question whether the measure proposed is within the powers of the Local Legislature concerned), and shall not be deemed to involve the examination of matters of form or details of drafting.

In connection with sub-rule (3), see the last note to r. 28 above. In submitting a Bill to the Governor General, this sub-rule should be quoted, and it should be stated explicitly what orders of the Governor General are required, or to what the Governor General is asked to agree.

A complaint having been received from the Secretary of State that in the case of a Bombay Bill and a Bengal Bill the Govt. of India's letter conveying approval of these Bills was received before copies of the Bills themselves, it was decided that the Leg. Dept.'s letter conveying approval of a Bengal, Madras or Bombay Bill should in future be sent direct to the Secy. of State by the Local Govt. concerned as an enclosure to their despatch relating to the Bill and not by the Leg. Dept. under r. 34, *post* : Leg. Dept. Pro., August, 1915, Nos. 13-17.

Where objection is taken to a Bill as an administrative measure, the necessary communication should, if the Legislative Department so desires, be drafted by the Executive Department taking the objection for issue by the Legislative Department.

It has been the practice to submit to the Governor General for orders all Bills dealt with under rule 5 of the *Instructions regarding Legislation in Local Councils* though strictly speaking such Bills are not covered by rule 30. In connection with the U. P. Municipalities Amendment Bill 1919 it was decided that only such rule 5 Bills need be submitted to the Governor General as the Secretary, Legislative Dept. considers to be of importance (O. D. 169).

As to non-official Member's Bills, see r. 10 of the *Instructions to Local Governments regarding Legislation, post*.

**31.** When a Bill has been introduced in a local Council without a prior report to the Secretary of State and is, along with the explanatory communication required of the Local Government in such a case, received by the Government of India, the Legislative Department shall refer the Bill for consideration as an administrative measure to the Executive Department to which the subject belongs, and simultaneously to any other Department concerned, and shall also itself examine it, before submitting the papers to the Governor General for orders as to whether any, and (if any) what, communication shall be addressed to the Local Government regarding it.

Proceedure in case of draft Bill introduced without prior report to Secretary of State.

This rule should be read with r. 5 of the *Instructions regarding Legislation in Local Councils, post*.

In such cases the Local Government concerned need not await any reply from either the Secretary of State or the Government of India before proceeding further with the Bill—see r. 6 of the *Instructions* referred to above.

**32** When, after a Bill has been introduced in a local Council, an amendment in it is reported for orders, the Legislative Department shall refer it for consideration as an administrative measure to the Executive Department to which the subject belongs, and simultaneously to any other Department.

Reference to Executive Departments regarding amendment in Council.



ment concerned, and shall also itself examine it, before any orders are issued.

This rule does not require submission to the Governor General. But if any objection is taken, the case must of course, be submitted under r. 10, above.

Reference to Executive Departments before submission of Law for Governor General's assent and transmission to Secretary of State.

33. When a law passed by a local Council is submitted for the assent of the Governor General under section 40 of the Indian Councils Act, 1861,<sup>1</sup> the Legislative Department shall refer it to the Executive Department to which the subject belongs, and simultaneously to any other Department concerned, for consideration as an administrative measure, before submitting it to the Governor General for assent and transmitting an authentic copy thereof, if assented to, to the Secretary of State, as required by section 41<sup>2</sup> of the Statute aforesaid.

Copies of correspondence to be sent to Secretary of State and Executive Departments concerned.

34. The Legislative Department shall, without delay, transmit copies of all correspondence regarding the Bills of Local Councils to the Secretary of State for information, and shall also, from time to time, send copies of the same to the Executive Departments concerned for record.

As to a deviation from this rule in the case of the Govt. of India's letters conveying approval of Bengal, Madras and Bombay Bills—see note to r. 80, above.

### Part VIII.--Making of Regulations.

Executive Department to deal with proposals for the making of Regulations.

35. (1) Where a Local Government proposes the draft of a Regulation to the Government of India in pursuance of the provisions of the Government of India Act, 1870,<sup>3</sup> the correspondence shall be dealt with in, and, if necessary, transferred to, the Executive Department to which the subject belongs, and it shall there be dealt with, as far as may be, in the same manner as business under Part V :

Provided that every draft of a Regulation proposed as aforesaid, shall, ~~under the orders of the Governor General~~ <sup>when desired</sup> be brought before a meeting of Council.

(2) If the draft is approved ~~at a meeting of Council as aforesaid~~, a copy of it shall be sent by the Executive Department to the Legislative Department with an Official Memorandum stating that it has been so approved as an administrative measure, and requesting that it be submitted to the Governor General for assent.

(3) The Legislative Department shall thereupon submit the Regulation for the assent of the Governor General, and, if it is assented to, shall give it the proper serial number for the year, cause it to be published in the manner prescribed by law, and transmit an authentic copy to the Secretary of

<sup>1</sup> See now s. 81(3) of the Govt. of India Act, 1915, *ante*.

<sup>2</sup> See now s. 82, *ibid*.

<sup>3</sup> See now s. 71, *ibid*.

Entered by Members  
in Council

State for information. A copy shall also be sent to the Executive Department concerned for record.

This rule does not provide for circulation to Members of Council; but r. 21 of the *Secretariat Instructions*, post, requires Secretaries, save in cases of special urgency, to circulate all Council cases before they are brought before a meeting.

"Theoretically no doubt these Regulations are the works of the Local Governments; practically, their principles are settled by the Government of India, and their form by the Legislative Department. It seems to me, therefore, desirable that before they are submitted for final consideration in Council, they should be examined in the Legislative Department, in order to ensure their correctness in form, after the substance has been approved by the Department in charge"—*per* the Hon'ble Mr. Scoble—*see* Leg. Dept. U. O. 432 of 1888.

The Regulations are a form of legislation and it is contrary to usage to pass them otherwise than by an Order made in Council—*see* Leg. Dept. U. O. 480 and 707 of 1908.

### *Part IX.—Making and Promulgation of Ordinances.*

24 & 25 Vict.,  
c. 67. 36. Every proposal for the making and promulgation of an Ordinance under section 28 of the Indian Councils Act, 1861,<sup>1</sup> shall be dealt with, as far as may be, in the same manner as business under Part VI.

Proposals  
regarding  
Ordinances  
how to be  
dealt with.

### *Part X.—Proceedings of the Executive Council.*

37. Orders and notes by the Governor General and Members shall be initialled only; and no such order or note shall be entered in the Proceedings of the Government of India unless it has first been converted into a Minute.

Orders and  
notes of Gov.  
ernor General  
and Members.

As to the printing of such notes and the names of the writers—*see* r. 57 of the *Secretariat Instructions*, post

37-A. Every important despatch to the Secretary of State shall be signed by all those Members who have taken part in the discussions connected with it, including any Members who may have dissented from it. All other despatches shall be signed by at least three Members.

Signing of  
Despatches to  
Secretary of  
State.

38. A Member may record a Minute—

Recording of  
Minutes.

- (a) under the provisions of section 5 of the Government of India Act, 1870<sup>2</sup>; or,
- (b) when, after oral discussion in Council, he desires to express dissent, either in whole or in part, from a despatch to the Secretary of State or from an Order in Council, or from a proposed despatch or Order; or,
- (c) with the consent of the Governor General, on any other occasion.

<sup>1</sup> See now s. 72 of the Govt. of India Act, 1915, *ante*.

<sup>2</sup> See now s. 41 (2), (3), *ibid*.

Minute of 'dissent under r. 38(b).

**38-A.** Where, on a draft despatch being considered in Council, a Member dissents and desires to exercise the right of expressing his dissent in a Minute under the provisions of rule 38 (b), his Minute shall be confined to the points raised by the discussion in Council, and shall be circulated to the other Members before the despatch is finally settled, and the despatch shall contain a reference to the Minute, and, if necessary, a short statement of the views of the majority with reference thereto.

Signing of Minutes.

**39.** Every Minute shall be signed in full by the writer, and placed on record, and, if the Minute is to form an enclosure to a despatch to the Secretary of State, or to be otherwise transmitted to him, the copy so transmitted shall be similarly signed.

As to the collection and submission to the Governor General of notes and minutes written by His Excellency, see the Private Secretary's Memorandum of the 14th March 1906, quoted in connection with r. 51 of the *Secretariat Instructions*, post.

Entering of Minutes in Proceedings.

**40.** Every Minute shall be entered at length in the Proceedings of the Government of India.

#### *Part XI.—Observance of, and departure from, Rules.*

Secretaries responsible for observance of rules.

**41.** (1) The Secretary in each Department shall be responsible for the careful observance therein of these rules.

(2) Where a Secretary considers that there has been any departure from these rules, he shall personally bring the matter to the notice of the Governor General.

Joint and Deputy Secretaries.

**42.** For the purposes of these rules, the expression "Secretary" shall be deemed to include a Joint Secretary and in the case of the Railway Department, the President of the Railway Board and, in the case of the Indian Munitions Board, the President of that Board; and any of the functions of a Secretary, other than those referred to in rules 5, 6 and 41 may, with the approval of the Governor General or the Member in charge of the Department concerned, as the case may be, be discharged by a Deputy Secretary, or, in the case of the Railway Department, by the Secretary to the Railway Board or, in the case of the Indian Munitions Board, the Secretary to that Board.

As to Secretaries, see the notes to r. 12, *ante*; and as to the position of a Deputy Secretary, see Leg. Dept. U. O. 800 of 1900, where it was doubted whether a warrant under the State Prisoners Regulation, 1818 (III of 1818), could be signed by any one but a Secretary. Cf. also rr. 2 and 3 of the *Secretariat Instructions* below.

Power for Governor General to permit departure from rules.

**43.** The Governor General may, from time to time, if he thinks fit, permit any departure from these rules.

## SECRETARIAT INSTRUCTIONS.

Ancillary instructions for the guidance of the Government of India Secretariat in matters of detail were first issued by the Home Department in a comprehensive form on the 19th August 1893. These were last revised and re-issued in the following form on the 4th September 1907. Modifications subsequently made have been incorporated.

## I.—MATTERS OF SUBSTANCE.

*General.*

1. The Secretary in each Department shall be responsible for the careful observance therein of these rules. Responsibility of Secretary.

1-A. These rules apply generally to the Indian Munitions Board, and in particular all provisions relating to the Railway Department, Railway Board, and to the President and Secretary of the Railway Board, apply *mutatis mutandis* to the Indian Munitions Board and to the President and Secretary of that Board. Application of rules to the Indian Munitions Board.

2. For the purposes of these rules, the expression "Secretary" shall be deemed to include a Joint Secretary, and, in the case of the Railway Department, the President of the Railway Board. Meaning of "Secretary."

3. Any of the functions of a Secretary, other than those referred to in rules 1, 20 (4), 36 and 64, may, with the approval of the Governor General or the Member in charge of the Department concerned, as the case may be, be discharged by a Deputy Secretary, or, in the case of the Railway Department, by the Secretary to the Railway Board. Deputy Secretary and Secretary, Railway Board.

4. It shall be the duty of the Secretary in the Department to which the subject belongs to submit every case which he is not by the practice of the Department competent himself to dispose of, in a complete form, ready for orders to the Governor General or the Member in charge of the Department, as the case may be. Duty of Secretary to see that cases are complete.

*Explanation.*—For the purposes of these rules, the expression "the Department to which the subject belongs" has the same meaning as in the Rules of Business made under section 8 of the Indian Councils Act, 1861.

*See r. 1 of the Rules of Business, ante.*

5. If a case is received in the Department to which the subject belongs in an incomplete form, the Secretary Power of Secretary to call for

further information.

may call for the information necessary to complete it before submission to the Governor General or the Member in charge, as the case may be.

### *Noting on Cases.*

In connection with the subject of noting, *see*, too, rr. 47 to 50, *post*.

Notes to be temperately and courteously expressed.

6. All notes shall be temperately written and free from personal remarks. If apparent errors in the note of a Member in charge of another Department have to be pointed out, or if the opinions which he has expressed have to be criticized, special care must be taken that the observations are couched in respectful language.

Only one office note.

7. When a case is submitted for orders, it shall not contain more than one note from the office, the Superintendent of the Branch or Section re-writing or modifying the note of the clerk, if he cannot accept it. The office note may be similarly treated by the first Officer to whom the case is submitted, if he thinks fit.

Only two notes by gazetted officers.

8. When the case has passed to the gazetted Officers, ordinarily not more than two of them (including the Secretary) shall note upon it before passing it on to the Honourable Member. In the case, however of Departments with several Branches through which a case must necessarily pass, this limit cannot be enforced; but ordinarily only one note shall be recorded in each Branch.

In the Legislative Department it is not unusual, especially when the point raised is one of pure law, to issue a single dissenting note or opinion over the signatures of the Deputy Secretary, the Secretary and the Law Member. *See* Leg. Dept. Misc. File Register No. 211 of 1903 and the Hon'ble Mr. (Sir Thomas). Raleigh's note of 18th July 1903.

Précis.

9. It shall always be assumed that the paper under consideration will be read by the Officer to whom it is submitted. Consequently no paraphrases shall be permitted in the notes. A précis of the contents of a single paper shall be made only when it is of great length and complexity, and neither such a précis nor a précis of the contents or history of a file, shall ordinarily be prepared without the orders of an Officer.

Further instructions.

10. In some cases perusal of the paper under consideration will be sufficient, and nothing is required beyond a brief suggestion for action. When a note is required, it should be a statement of the case showing, more or less in detail, according to the importance and stage of the case, the question for consideration, the circumstances leading up to it, the rules and precedents bearing upon it, and suggestions for action. The reproduction in a note of *verbatim* extracts from the letter or despatch under consideration should ordinarily be avoided.

11. When an Officer agrees with the preceding note or recommendation, he shall append his signature and nothing more. Marginal notes, or notes to emphasize special points, may, however, be made.

Note con-  
curred in to  
be merely  
signed by  
concurring  
Officer.

As to the practice in the Legislative Department,—see the note to r. 8 above.

12. To facilitate the rapid passing on of cases, and especially in cases of emergency, full use shall be made of personal communication between Officers of the same Department. The Secretary in each Department should encourage his subordinate Officers to bring up cases for advice, discussion or disposal. Formal registration to show the transmission of cases from one Officer to another within the same Department is unnecessary.

Personal  
discussion in  
each  
Department.

13. A draft despatch, letter, resolution, notification or telegram, as the case may be, may be prepared at any stage of a case, if it appears that the consideration and disposal of the case would be facilitated by submitting it with a draft

Submission  
of anticipa-  
tory draft.

Substitute the following Rule 14.

14. When a case has been referred to another Department, and a difference between the Departments is disclosed, the case should usually be substituted for further consideration where the two Members in charge agree to a personal discussion, the Secretary should make a joint note giving the decision and further noting.

De-  
b.

15. When a case has been submitted to the Governor General under rule 11 (2) of the *Rules of Business*, and has been decided without a reference to Council, the Secretary in the Department to which the subject belongs shall submit the case when so decided to the Governor General for information.

Submission  
to Governor  
General of  
cases of dis-  
agreement  
decided  
without  
reference to  
Council.

Rule 11 (2) of the *Rules of Business*, ante, provides for the submission to Council of cases regarding which the Departments concerned are not in agreement. In such a case the Governor General may be able to suggest a *modus vivendi*, which, if accepted by the disputants, removes the necessity for a reference to Council.

As to the submission of cases to the Governor General—see the note to r. 40 below.

15-A. When recommendations are submitted to His Secretariat Excellency the Viceroy for the filling of appointments in the Government of India Secretariat, the principles laid down in the Home Department Office Memorandum No. 1369—74-(Estabts.), dated the 19th September, 1910, must be borne in mind.

*Home Department Office Memorandum, No. 1369-1374 (Estabts.), dated the 19th September, 1910.*—"In paragraph 287 of their report the Royal Commission upon Decentralization observe that it is very desirable that, in recruiting for Government of India Secretariats, care should be taken to avoid any predominance on the part of one province. The tenure of the Government of India Secretariat offices is limited, and, the Commission add, an officer having personal knowledge of one province only, is naturally prone, especially at the outset, to judge cases coming up from other provinces by the ideas and circumstances obtaining in his own. They consider it, therefore, of great importance that the Imperial Secretariats should be recruited so as to obtain personal knowledge of as many provinces as possible.

2. The Home Department consider that the suggestion by the Commission, which is in fact usually followed in practice, is worthy of adoption as a general principle in manning the superior staff of the Government of India Secretariats, and the undersigned is accordingly directed to commend

	Foreign	
	Finance	
	Finance (Military Finance)	Department
it to the	Public Works	

Department of Revenue and Agriculture. The Commission recognise Commerce and Industry that special Departments require special qualifications, but, as they observe, it should be possible to obtain these without material infringement of the principle above mentioned."

### *Drafting on cases.*

Important  
despatches  
to be submitted  
to  
Governor  
General.

16. In the case of important despatches, letters or resolutions, concerning any question upon which the Governor General has passed orders, either by approving the suggestions made in the notes or by writing a note of his own, but has not actually suggested the phraseology to be employed, the draft shall invariably be submitted to the Governor General before issue.

A despatch to the Secretary of State, though it may have correspondence annexed, should be self-contained so as to furnish an intelligible statement of the whole case, and departmental orders to this effect have been issued—see also the notes to rr. 25 and 61 below,

*Cf.* r. 18 of the *Rules of Business*, ante, in connection with references to the Legislative Department; and *see* rr. 6 to 12, 14, 47, 49 and 53 of these Instructions.

19. If a Member desires to refer a case in the Department of which he is in charge, to another Member personally, for formal opinion, he shall obtain the consent of the Governor General before doing so. If the Governor General refers a case to a Member personally, it shall, at that stage, be noted on by such Member only, and then re-submitted to the Governor General.

Personal  
references  
between  
Members.

Under this rule, the Madras Hindu Limited Owners Bill was referred by the Home Department to the Member for Education (Sir C. S. Nair) with the permission of the Governor General.—A Pro., January, 1917, Nos. 10—17.

20. (1) Notes written in one Department and sent to another shall be treated as confidential. They shall not be referred to any Officer outside the Secretariat without the general or the specific consent of the Department to which they belong.

Confidential  
character of  
notes.

(2) Where a general consent has been given to the reference of notes to an Officer outside the Secretariat, such consent shall not be construed except when the reference is one by the Department of Commerce and Industry to the Director General of Commercial Intelligence, or by the Home Department to the Director, Criminal Intelligence, to apply to cases in which the papers are marked "Confidential" and in no instance to cases—

- (a) in which the Officer to whom the notes are referred is personally affected, or in which his official conduct is under consideration; or
- (b) in which the emoluments or allowances of any subordinate of the Officer to whom the notes are referred are discussed; or
- (c) in which the Member in charge of another Department to which the Officer consulted is subordinate has expressed an opinion.

(3) Each Department shall be deemed to have given its general consent to the reference of its notes to the Officers mentioned below by the Departments indicated in each case.

(a) *By any Department.*

- (i) Director General, Indian Medical Service;
- (ii) Sanitary Commissioner with the Government of India;

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\* The designation of "Director, Criminal Intelligence" was changed into "Director, Central Intelligence," by Home Department No. 1638-E., dated 21st March 1918, *see* B Pros., April 1918, No. 234.



- (iii) Director General of Commercial Intelligence ;
- (iv) Keeper of the Records of the Government of India ;
- (v) Librarian, Imperial Library ;
- (vi) Inspector General of Forests ;
- (vii) Controller of Patents and Designs ;
- (viii) Actuary to the Government of India ; and
- (ix) Director of Statistics.

*(b) By the Home Department.*

- (i) Director of Central Intelligence ;
- (ii) Comptroller and Auditor General ; and
- (iii) Controller of Currency.

*(c) By the Foreign and Political Department.*

- (i) Director of Central Intelligence ;
- (ii) Inspector General, Imperial Service Troops ;
- (iii) Comptroller, India Treasuries ;
- (iv) Surveyor-General of India ; and
- (v) Educational Commissioner with the Government of India.

*(d) By the Department of Revenue and Agriculture.*

- (i) Inspector General of Forests ;
- (ii) Surveyor General of India ;
- (iii) Inspector General, Civil Veterinary Department ;
- (iv) Director General of Observatories ; and
- (v) Inspector General of Agriculture in India.

*(e) By the Public Works Department.*

- (i) Consulting Architect to the Government of India ;  
and
- (ii) Electrical Adviser to the Government of India.

*(f) By the Finance Department,*

- (i) Comptroller and Auditor General ;
- (ii) Comptroller, India Treasuries ; and
- (iii) Controller of Currency.

*(g) By the Army Department.*

- (i) Chief of the General Staff ;
- (ii) Adjutant General in India ;
- (iii) Quartermaster General in India ;
- (iv) Principal Medical Officer, His Majesty's Forces in India ;
- (v) Military Secretary to His Excellency the Commander-in-Chief ;
- (vi) Director General of Ordnance in India ;
- (vii) Director General of Military Works ;
- (viii) Director of the Royal Indian Marine ; and
- (ix) Surveyor General of India.

*(h) By the Department of Commerce and Industry.*

- (i) Director General of Telegraphs ;
- (ii) Chief Inspector of Explosives with the Government of India ;
- (iii) Director, Geological Survey of India ;
- (iv) Director General of the Post Office of India ;
- (v) Controller of Printing, Stamps and Stationery ;
- (vi) Inspector General of Excise and Salt ;
- (vii) Commissioner, Northern India Salt Revenue ;
- viii) Chief Inspector of Mines in India ; and
- (ix) Controller of Patents and Designs.

The offices of Director General of Telegraphs and Director General of the Post Office have been combined into one under the designation Director General of Posts and Telegraphs.

*(i) By the Department of Education.*

- (i) Director General of Archaeology ; and
  - (ii) Educational Commissioner with the Government of India.
- (4) No notes shall be referred to the—
- (i) Advocate General, Bengal,
  - (ii) Standing Counsel to the Government of India, or
  - (iii) Government Solicitor, Calcutta,

except on the order of an Officer not below the rank of Secretary, and with the specific consent of each Department the notes of which are being so referred.

(5) Subject to the control of the Department to which he is subordinate, any Officer to whom notes may be referred under this rule, may himself make unofficial references to that Department, and the following Officers may make such references to any Department, namely :—

- (i) Director General, Indian Medical Service ;
- (ii) Sanitary Commissioner with the Government of India ;
- (iii) Director of Central Intelligence ;

(iv) Inspector General of Prisons ;  
and of clause (5) of rule 20 :—  
"and all attached offices of the  
Government located in the United Provinces  
shall make all references to the  
Secretary to the Legislative Department".

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and of clause (5) of rule 20 :—  
"and all attached offices of the  
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Government located in the United Provinces  
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Secretary to the Legislative Department".

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position.

### *Circulation and Discussion in Council.*

Circulation of  
Council cases  
to Members  
before  
Meetings.

21. The Secretary in each Department shall be responsible that, except with the special permission of the Governor General, no case, the subject of which belongs to the Department, shall be brought before a meeting of Council without having been previously seen by all the Members.

Order of  
circulation.

22. Council cases shall, in the absence of any special instructions to the contrary in any particular case, be circulated to the Members in the following order :—

(a) Cases belonging to the Civil Departments (other than the Foreign and Political Department) :—

(i) }  
(ii) } the five Members in charge of the Civil  
(iii) } Departments other than the initiating  
(iv) } Department ;  
(v) }

(vi) the Member in charge of the Army Department ;  
(vii) the Member in charge of the initiating Department ;

(viii) the Governor General.

(b) Cases belonging to the Foreign and Political Department ;—

- |       |   |  |
|-------|---|--|
| (i)   | } | the six Members in charge of the Civil Departments ; |
| (ii)  |   |  |
| (iii) |   |  |
| (iv)  |   |  |
| (v)   |   |  |
| (vi)  |   |  |

(vii) the Member in charge of the Army Department ;

(viii) the Governor General.

(c) Cases belonging to the Army Department ;—

- |       |   |  |
|-------|---|--|
| (i)   | } | the six Members in charge of the Civil Departments ; |
| (ii)  |   |  |
| (iii) |   |  |
| (iv)  |   |  |
| (v)   |   |  |
| (vi)  |   |  |

(vii) the Member in charge of the Army Department ;

(viii) the Governor General.

23. When time permits and the

~~Rule 25 :- All notices and papers submitted to the Governor General and all the Members, and the copies so received shall ordinarily be returned to the Secretary by the Members at the close of the discussion in Council.~~

the copies so received shall ordinarily be returned to the Secretary by the Members at the close of the discussion in Council.

Two copies of every notice regarding a case for discussion in Council (with the connected papers) should be supplied for the use of the Governor General, and these must reach the Private Secretary's office on, at latest, the Wednesday preceding the Friday on which the meeting for discussion of the case is held. Otherwise the Governor General will not permit the case to be brought before the meeting. See Private Secretary's demi-official letter addressed to Secretaries on the 24th May, 1902.

*Correspondence with the Secretary of State, or the India Office.*

#### (a) Telegrams.

24. (a) Every telegram to the Secretary of State shall, unless it relates only to matters of minor importance or to matters of routine, be submitted to the Governor General before issue. A copy of every telegram to the Secretary of State shall be sent after issue to the Private Secretary.

Telegrams to be submitted to Governor General.

(b) In the case of telegrams to the Secretary of State relating to matters of grave public policy, it shall be the

duty of the Secretary in each Department to ask the permission of the Governor General to circulate the draft to all the Members, or, if the urgency of the case does not admit of this, to ask permission of the Governor General to circulate a copy of the telegram immediately after despatch.

In his Despatch No. 37-Public, dated 16th March, 1917, the Secretary of State complained of the inconvenience caused when questions of great importance are not submitted for his decision in Council until a very early announcement of policy is necessary in India. The complaint arose out of a telegram sent to the Secretary of State requesting his approval to an amendment in the Patna University Bill which was then before the Legislative Council in its final stage—Leg. Dept. U. O. 447 of 1917.

### (6) Despatches.

Approval of  
despatches.

25. Every despatch to the Secretary of State shall, unless it relates only to matters of minor importance or to matters of routine, be submitted in draft to the Governor General or to the Member in charge of the Department to which the subject belongs, as the case may be, unless the Secretary is, by the practice of the Department, competent himself to order the issue of the draft.

In the despatch from the Secretary of State (Lord Cross), No. 68 (Public), dated the 19th May, 1887, attention was called to the "irregular and inconvenient" practice which then prevailed of issuing despatches signed by only two Members of the Government of India or even by one alone. It was at the same time stated that, if in any special case it was desired to send in advance a copy of a despatch not duly signed, it should be accompanied by an explanatory statement, and the official copy duly signed should not be delayed longer than the next mail. With these views Lord George Hamilton, in his despatch No. 29 (Public), dated the 15th February, 1901, expressed concurrence, and observed that, as the matters dealt with in despatches to the Secretary of State included all questions of material importance, it was desirable that they should bear the signatures of all members of the Government who had taken part in the disposal of them. The matter was considered in Council on the 10th May, 1901, and an order was then passed "that care be taken in the Departments of Government to carry out the instructions of the Secretary of State to the effect that all despatches from the Government of India shall be signed by at least three Members, and important despatches by all those Members who have taken part in the discussions." See Home Dept. Public A, Pro. May, 1901, Nos. 271-272.

As to the drafting of despatches, see rr. 16 and 17, *ante*.

No despatch from the Secretary of State, or *vice versa*, should be published in the *Gazette of India* without the knowledge and sanction of the Governor General—see Home Dept. O. M. No. 1614, dated the 24th July, 1899.

No despatch to the Secretary of State should, save in exceptional circumstances, be made public until the interval necessary for it to reach the India Office has elapsed. Apart from this restriction and the orders above referred to, there appears to be no prohibition against the publication of correspondence with the Secretary of State—see Leg. Dept. U. O. 703 of 1898. But despatches from the Secretary of State and correspondence indicating a difference of opinion between the Government of India and a Local Government should be communicated to a subordinate officer only with the express permission of the former—see Home Department's letter Nos. 3191—3200, dated the 23rd September, 1903.

26. The Secretary in each Department shall be responsible for the correctness of the enclosures to every despatch to the Secretary of State issuing therefrom. Enclosures to despatches.

In this connection, see too rr. 61 to 63 below.

27. Subject to the provisions of rule 28, the circulation for signature of every despatch to the Secretary of State, shall, except in case of urgency, commence, if possible, six days before the departure of the mail, in order that each Member may have leisure to study it and the papers connected therewith. Such papers, if the subject is one of importance or interest and has not been brought before a meeting of Council, shall be circulated along with the despatch. Circulation of despatches for signature.

28. Every despatch to the Secretary of State conveying a decision which has been expressed in an Order in Council, shall issue as soon as possible after the meeting of Council at which the decision was taken. Save in exceptionally heavy cases, such despatches shall issue by the mail next following. Early issue of despatches.

As to a complaint by the Secretary of State regarding the inconvenience of delay in the submission of questions for his consideration in Council—see the note to r. 24, above.

29. Every despatch to or from the Secretary of State issuing from, or received in, the Foreign and Political Department shall be circulated as promptly as possible, first, to the Governor General for signature or perusal, as the case may be, and, then, to all the Members in the most convenient order with regard to their places of residence. Foreign and Political Department despatches.

30. Every despatch to the Secretary of State issuing from any Department other than the Foreign and Political Department shall be circulated for signature, first to the Member in charge, then to the other Members in the order aforesaid, and finally to the Governor General. Order of circulation for signature.

31. Every despatch from the Secretary of State received in any Department other than the Foreign and Political Department shall be circulated as promptly as possible, first, to the Member in charge, then to the Governor General, and finally to the other Members in the order aforesaid. Circulation of despatches received.

32. Whenever the Governor General is on tour, lists of despatches to and from the Secretary of State shall be sent to the Private Secretary, immediately after the departure of the outgoing, and the arrival of the incoming mail, respectively. Lists to Governor General when on tour.

33. A copy of every despatch to the Secretary of State respecting intended legislation in the Council of the Governor General shall, when issued by an Executive Department, be forwarded to the Legislative Department for record. Copies of despatches regarding legislation to be sent to Legislative Department.

As regards the communication of other official papers to the Legislative Department, see Leg. Dept. U. O. 433 of 1902 and Unofficial Memorandum

No. 139—143, dated the 16th June, 1902. Except where such papers contain an opinion of the Advocate-General of Bengal or refer to legislation in a local Council, the Legislative Department prefers to receive nothing but the printed collection.

### (c) Secretaries' Letters.

Substitution  
of letters for  
despatches.

**34.** Letters shall be sent by the Secretaries in the Departments to the India Office in place of despatches, in the following classes of cases, subject, however, to the understanding that only purely formal business may be so dealt with :—

- (a) the submission of papers, without comment or expression of the views of the Government of India beyond that contained in the papers themselves, for the information or orders of the Secretary of State;
- (b) purely routine and unimportant matters.

### *Publication of papers.*

Responsibility  
for correct  
publication  
in  
Gazette.

**35.** The Secretary in each Department shall be responsible for the correctness of all papers sent therefrom for publication in the Gazette.

The *Gazette of India* was first published in 1863, and it was then provided by the Official Gazettes Act, 1863 (XXXI of 1863), that, "when in any Regulation or Act then in operation, or in any rule having the force of law, it was directed that any order, notification or other matter should be published in the official Gazette of any Presidency or place, such order, notification, or other matter should be deemed to be duly published in accordance with the requirements of the law if it were published either in the Gazette in which it would have appeared but for the passing of that Act, or in the *Gazette of India* under the directions of the Governor General of India in Council." Local official Gazettes are also published by the various Provinces, with the exception of Ajmer-Merwara, and British Baluchistan, notifications for which appear consequently in the *Gazette of India*. The *Coorg District Gazette* and the *Andaman and Nicobar Gazette* are published once a month only; all the other Gazettes are published weekly.

Approval of  
Secretary.

**36.** No papers, except those which it has been the ordinary practice to publish in the Gazette or which are required by law to be so published shall be published without full consideration and without the approval of the Secretary in the Department to which the subject belongs.

Sanction of  
Governor  
General.

**37.** No despatches to or from the Secretary of State shall be sent to the press room or otherwise published without the sanction of the Governor General, unless they are of a purely formal character.

Communica-  
tion to Local  
Governments.

**38.** Where papers are communicated to Local Governments or to the public, all matter indicating the existence of a difference of opinion in Council shall be removed, unless





or papers under consideration are disposed of, such papers shall not be added to the current correspondence, but shall be placed loose above it, and marked with slips "Paper under consideration" I, II, etc., as the case may be. Above the paper or papers under consideration shall be placed the notes.

Indication  
of subject-  
matter.

45. The subject of the first current paper in a file shall be entered in red ink on the form used for the first sheet of the notes: the subject of any subsequent paper (receipt or issue) shall be entered in red ink, not on a separate sheet in that form, but in chronological order in the notes.

Printed  
references.

46. Where a paper which has been printed is required for information or reference, a printed copy, and not the original, shall, in the absence of orders to the contrary, be submitted.

### *Noting on Cases.*

In connection with the subject of noting, *see*, too, rr. 6 to 11, *ante*.

Paper.

47. Every note shall be legibly written upon paper of foolscap size, with a quarter margin and on one side of the paper only.

Notes, if of any length, should be divided into paragraphs numbered in consecutive order—*see* Home Department's Official Memorandum No. 669—674-Public, dated the 15th March 1890

Routine.

48. Routine notes, such as requests for previous papers, calls for proofs or drafts, orders to print, etc., shall be written on separate slips, and shall be destroyed without being filed.

Separation  
of notes of  
different  
Departments.

49. In cases referred by one Department to another, the notes written in the Department referred to shall ordinarily commence immediately below the notes recorded in the referring Department.

Sequence of  
notes.

50. There shall ordinarily be only one set of notes, but occasionally it may not be convenient to run all the notes into one set, and Appendices containing notes or information on subsidiary points may be attached.

### *Printing and Recording of Cases.*

Recorded  
collection.

51. When papers are recorded in proceedings, a Table of Contents shall be added. This may, however, be omitted in cases which are not recorded in A Proceedings, if there are only one or two papers.

Each recorded collection will thus ordinarily contain, in the order named—

- (a) a Table of Contents, with reference to former and later Proceedings;
- (b) the notes on the case, with Appendices to the notes, should they be found necessary in exceptional cases; and
- (c) the official Proceedings.

The record numbers of the official correspondence shall be entered in the margin of the notes opposite the statement of the subject of each paper.

Private Secretary's Memorandum, dated the 14th March, 1906, required Secretaries to forward to the Private Secretary to the Viceroy, at the beginning of each month, all A or Secret Proceedings of their Departments which contain notes or minutes by the Governor General. Notes written in Departments and merely initialled by His Excellency are also required. Copies of notes written by His Excellency and recorded in B Proceedings should also be forwarded. The practice was discontinued during the Viceroyalty of Lord Hardinge.

52. Confidential or secret papers recorded in A Proceedings shall be excluded from the ordinary proceedings volumes. In order to show that this has been done, a page will be inserted in the volume where the papers would otherwise have been found, indicating that they are "confidential" or "secret" proceedings. Confidential Files.

53. Précis and notes shall not be entered in the official proceedings of the Government of India, save by the express direction of the Governor General. Exclusion of notes from proceedings.

In this connection, see r. 37 of the *Rules of Business*, ante, and r. 57 below, regarding the notes of Members of Council.

54. Demi-official communications, when not ordered to be brought on the official record, shall, if preserved at all, be treated as notes and incorporated therewith. Demi-official correspondence.

55. (1) When notes are printed either after the disposal or during the currency of a case, all matter of a routine nature, dates and numbers of un-official references and the like shall be struck out before the papers are sent to Press. Editing of notes.

(2) Before the notes are printed for permanent record, they shall be carefully edited by some official, appointed by the Secretary, of not lower standing than the Superintendent of a Branch or Section, who shall see that everything not of permanent value is omitted.

56. The printing of the different parts of a collection of proceedings, shall be in the different kinds of type prescribed by the Department of Commerce and Industry.



Whenever the Secretary of State is addressed on any question of importance upon which Local Governments have been consulted, a copy of their replies should, in the absence of valid reasons to the contrary, accompany the despatch.

To prevent omissions, not only the enclosures but also the enclosures (if any) to enclosures should be enumerated and specified.

62. All papers sent for publication in the Gazette shall be signed by the Secretary or, under the Secretary's instructions, by an Officer not below the rank of Assistant Secretary. Signature of  
Gazette Pub-  
lications.

As to the Gazette, see the note to r. 35 above.

21 & 22  
Vict., c. 106.

63. Every despatch sent to the Secretary of State under section 28<sup>1</sup> of the Government of India Act, 1858, shall be enclosed in double covers, the inner cover being marked "Secret" and addressed to the Secretary of State by name. Such despatches shall be transmitted from the Department to which the subject belongs, even in cases where, if they had not been secret, they would have been transmitted from the Finance Department. Secret  
despatches.

64. Every letter addressed to an Ambassador or Minister of His Majesty or to a Foreign or Colonial Government shall be signed by the Secretary in the Department to which the subject belongs. Letters to  
Ambassadors,  
etc.

The following are additional instructions which appear to be still in force and ought not to be overlooked :—

#### USE OF "ORDINARY," "EARLY," "URGENT" AND "IMMEDIATE" LABELS.

In order to secure uniformity and simplification of the methods of indicating urgency or priority in dealing with official papers, the Governor General in Council directs the adoption, in all Departments of the Government of India, of the following system of coloured labels for use on boxes, files and letters :—

##### 2. Ordinary—White.

This will apply only to box-labels, no indication being needed on files or letters.

##### 3. Early—Green (Emerald).

This colour will be used for boxes containing ordinary despatches in circulation, and for boxes, files and letters requiring priority over ordinary business during the usual office hours.

##### 4. Urgent—Red (Vermilion).

This colour is to be employed for boxes containing despatches for signature, and for boxes, files and letters requiring the attention without delay of the persons to whom they are addressed, whether at their offices or at their private residences.

##### 5. Immediate—Blue (Sky).

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<sup>1</sup>See now s. 13 (2) of the Government of India Act, 1915, *ante*.

This colour is to be used only in cases of *extraordinary urgency* requiring instant attention—such as petitions for reprieve on the eve of execution, military and political intelligence of an unusually important description, or other occurrences of great emergency.

Boxes and letters so marked must be placed *at once* in the hands of the persons to whom they are addressed, *whether by night or by day*.

6. Labels for marking files will be of stiff paper or thin card-board, 12 inches by 4 inches, with an eyelet in the left-hand top-corner for attachment to the upper series on the file.

The word “Early,” “Urgent” or “Immediate,” with concise instructions (as indicated above), will be printed upon each label. When the urgency has ceased to exist, the label will be detached.

7. Labels for addressing boxes will be on ordinary paper, as heretofore, of the prescribed colours.

8. In order to call attention to despatches for signature and papers in circulation, the list of names of Hon'ble Members will be printed on a white slip,  $2\frac{3}{4}$  inches in width, to be gummed on the coloured ground. The nature of the contents of the box can thus at once be recognised.

9. The colours Green, Red and Blue are to be used for no other purpose in connection with files, boxes and letters, than those indicated above, *viz.*, as definite indications of the three degrees—“Early,” “Urgent” and “Immediate.” Small labels, of these colours, 3 inches by  $\frac{3}{4}$  inch, will be used on letters.

Instructions in the vernacular will be issued to jemadars, duffries, harkaras and others, making it clear what their duties are in regard to boxes and letters marked with the respective colours.

10. Slips inserted for reference in the pages of a file will be of white or pale pink.

The *Paper under consideration* in a file will invariably be marked by a slip with that heading printed upon it. Other references will be alphabetical.

11. The use of “Early” labels should be restricted to cases meriting priority, and that of “Urgent” labels should be strictly limited. A profuse employment of either will defeat the object in view.

The necessity for using blue (“Immediate”) labels will be altogether exceptional.

*See Home Department's Memorandum No. 662—668 (Public), dated the 15th March, 1890.*

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#### COMMUNICATION TO LEGISLATIVE DEPARTMENT OF LEGAL OPINIONS RECEIVED IN EXECUTIVE DEPARTMENTS.

Whenever the opinion of the Advocate General<sup>1</sup> is taken by any Executive Department, or the opinion of the Law Officers of the Crown<sup>2</sup> is received in such Department, a copy of it should be furnished to the

<sup>1</sup> This refers to the Advocate General of Bengal only. As to the Advocates General of Madras and Bombay—see Legislative Department's Office memorandum of the 13th February, 1899.

<sup>2</sup> By the expression “Law Officers of the Crown” is apparently meant the Law Officers in England—see Legislative Department's Unofficial Memorandum No. 39—44, dated the 13th February, 1899.

*(g) By the Army Department.*

- (i) Chief of the General Staff ;
- (ii) Adjutant General in India ;
- (iii) Quartermaster General in India ;
- (iv) Principal Medical Officer, His Majesty's Forces in India ;
- (v) Military Secretary to His Excellency the Commander-in-Chief ;
- (vi) Director General of Ordnance in India ;
- (vii) Director General of Military Works ;
- (viii) Director of the Royal Indian Marine ; and
- (ix) Surveyor General of India.

*(h) By the Department of Commerce and Industry.*

- (i) Director General of Telegraphs ;
- (ii) Chief Inspector of Explosives with the Government of India ;
- (iii) Director, Geological Survey of India ;
- (iv) Director General of the Post Office of India ;
- (v) Controller of Printing, Stamps and Stationery ;
- (vi) Inspector General of Excise and Salt ;
- (vii) Commissioner, Northern India Salt Revenue ;
- viii) Chief Inspector of Mines in India ; and
- (ix) Controller of Patents and Designs.

The offices of Director General of Telegraphs and Director General of the Post Office have been combined into one under the designation Director General of Posts and Telegraphs.

*(i) By the Department of Education.*

- (i) Director General of Archæology ; and
- (ii) Educational Commissioner with the Government of India.

(4) No notes shall be referred to the—

- (i) Advocate General, Bengal,
- (ii) Standing Counsel to the Government of India, or
- (iii) Government Solicitor, Calcutta,

except on the order of an Officer not below the rank of Secretary, and with the specific consent of each Department the notes of which are being so referred.

## RULES FOR THE CONDUCT OF LEGISLATIVE BUSINESS IN THE INDIAN LEGISLATIVE COUNCIL.<sup>1</sup>

[4th February, 1897.]

The following are the revised rules for the conduct of the Legislative Business of the Council of the Governor General made, under s. 18 of the Indian Councils Act, 1861 (24 & 25 Vict., c. 67),<sup>2</sup> by the Legislative Council of the Governor General on the 4th February, 1897, and assented to by the Governor General (Lord Elgin) on the same day as amended by the Legislative Council on the 28th January, 1910, with the assent of the Governor General (Lord Minto), and again on the 16th February, 1917, with the assent of the Governor General (Lord Chelmsford).<sup>3</sup>

### Part I.—Preliminary.

Supersession  
of former  
rules.

1. These rules supersede the rules for the Conduct of Business at the meetings of the Council made on the 11th day of February, 1873, and the 16th day of February, 1883.

Definitions.

2. In these rules—

“Council” means the Council of the Governor General of India assembled for the purpose of making Laws and Regulations :

“President” means the Governor General or (during the time of his visit to any part of India unaccompanied by his Council) the President nominated by the Governor General in Council, under the Indian Councils Act, 1861,<sup>4</sup> section 6 ; 24 & 25  
or, in the absence of both the Governor General and the President so nominated, the Vice-President appointed by the Governor General under s. 4 of the Indian Councils Act, 1909 :<sup>5</sup> Vict., c. 67.  
9 Edw. 7, c. 4.

“Member” means a Member of the Council, whether Ordinary, Extraordinary or Additional :

“Secretary” means the Secretary to the Government of India in the Legislative Department, and includes the Deputy Secretary and every person for the time being exercising the functions of the Secretary : and

“Local Government” includes a Chief Commissioner.

<sup>1</sup> The Council of the Governor General for the purpose of making Laws and Regulations is now termed the Indian Legislative Council, *see* s. 63 of the Government of India Act, 1915, *ante*.

<sup>2</sup> See now s. 70 of the Government of India Act, 1915, *ante*.

<sup>3</sup> See Notifications No. 3, dated 5th February, 1897, in *Gazette of India*, Pt. I, p. 97, No. 12, dated 28th January, 1910, *ibid*, p. 128, and No. 7, dated 22nd February 1917, *ibid*, p. 313.

<sup>4</sup> Printed in Appendix I, *post*.

As to the President *see* now s. 64(3) of that Act. Those provisions of s. 6 of the Indian Councils Act, 1861, which related to the appointment of a President of Council during the absence of the Governor General in any other part of India, have not been reproduced by the Government of India Act, 1915—*see* note to s. 42 of that Act, *ante*.

As to the Vice-President and the Senior Ordinary Member, *see* ss. 38, 42 and 64 (3) of the Act of 1915, *ante*, and the notes thereunder.

As to Secretaries to the Government of India, *see* the Secretaries to Government Act, 1834 (II of 1834), and rr. 12 and 42 of the *Rules of Business*, *ante*.

For a definition of the expression "Local Government," *see* now s. 134 (4) of the Government of India Act, 1915 and *cf.* s. 3 (29) of the General Clauses Act, 1897 (X of 1897).

## Part II.—Meetings of the Council.

As to the place of meeting of the Council and the question of legislation at Simla, *see* the notes to section 64 of the Government of India Act, 1915, *ante*.

The Council may now—*see* sections 63 (1) and (2) of the Government of India Act, 1915, and the Council Regulations—ordinarily number 69 Members in all, namely:—

- (1) the Governor General;
- (2) the Lieutenant-Governor of the Punjab or the Chief Commissioner of Delhi, as the Council assembles in the Punjab or in Delhi—*see* s. 63 (4) of the Government of India Act, 1915, *ante*.
- (3) the Commander-in-Chief *quâ* Extraordinary Member—*see* s. 37, *ibid.*
- (4) to (9) the six Ordinary Members of the Executive Council;
- (10) to (36) twenty-seven elected Members;
- (37) to (66) thirty nominated Additional Members, of whom not more than twenty-eight may be officials; and
- (67) to (69) three nominated non-official Additional Members to be selected—
  - (i) one from the Indian Commercial Community,
  - (ii) one from the Muhammadan Community of the Punjab, and
  - (iii) one from the Landholders in the Punjab.

A note or programme of the legislative work in prospect is prepared in the Legislative Department twice a year—once before the commencement of the cold weather Session, and again on the return of the Government to Simla. The former is circulated before the Government leaves Simla, and in each instance circulation is confined to the Members of the Executive Council. The note includes, as far as possible, all suggestions for legislation which have been taken into consideration, as well as legislative proposals to which the Government stands actually committed. *See* discussion in the Executive Council on the 20th July, 1900—Leg. Dep. Misc. File Register No. 236 of 1901.

3. The Council shall ordinarily meet at 11 A.M., and shall not prolong its sitting after 4 P.M., unless the President otherwise directs.

### 4. [*Quorum omitted.*]

*See* s. 63 (2) of the Government of India Act, 1915, *ante*, and Reg. XIII of the Council Regulations, under which the quorum is fixed at fifteen Additional Members.



Members' places.

5. The Members shall sit in such order as the President may direct.

A plan of the Council Chamber is usually prepared with the approval of the President on which the seat allotted to each member is indicated.

Adjournments.

6. The President may adjourn, without any discussion or vote, any meeting or business, whether there be a quorum present or not, to any future day, or to any hour of the same day.

The day (if any) to which each meeting is adjourned, is announced by the President before the Council rises. It is the practice, where necessary, to postpone a meeting which has been so fixed to another and more convenient date by means of an informal notice to the Members issued under the orders of the Governor General. And this has been done even in the case of the first meeting of a Session convened by a notification in the *Gazette of India* in pursuance of the provisions of s. 17 of the Indian Councils Act, 1861, (*now* s. 64 of the Government of India Act, 1915, *ante*). See the notes in Leg. Dep. B. Pros., July, 1903, Nos. 46-47.

Points of order.

7. The President shall preserve order, and all points of, order shall be decided by him.

No discussion on any point of order shall be allowed, unless the President shall think fit to take the opinion of the Council thereon. Any Member may, at any time, submit a point of order to the decision of the President.

The President shall have all powers necessary for the purpose of enforcing his decisions.

Members to rise when speaking.

8. A Member desiring to make any observations on any subject before the Council shall speak from his place, shall rise when he speaks, and shall address the President. At any time, if the President rises, any Member speaking shall resume his seat.

Orders of speeches.

9. After the Member who makes a motion has spoken, other Members may speak to it in such order as the President may direct.

After all the Members have had an opportunity of speaking, the Mover may speak once by way of reply, and any other Member may, with the permission of the President, speak once by way of explanation :

Provided that, if the matter be an amendment of a Bill, the Member in charge of the Bill shall be entitled to speak next after the Mover of the amendment.

As to the reporting of speeches, see rule 37, below, and the note at the end of these rules.

Explanations.

10. When, for the purpose of explanation during discussion, or for any other sufficient reason, any Member has occasion to ask a question of another Member on any measure then under the consideration of the Council, he shall ask the question through the President.

11. Any Member may speak at the request and on behalf of another Member who is unable to express himself in English. Members who cannot speak English.

The practice is for the Secretary—*see* the definition in r. 2 above—to read the speeches of such Members “on their behalf.”

12. On every motion before the Council the question shall be put by the President, and shall be decided by a majority of votes. Voting.

Votes may be taken by voices or by division, and shall be taken by division if any Member so desires.

The President shall determine the method of taking votes by division.

There is nothing in these Rules to prevent a question which has been put to the vote and decided being raised again at a subsequent stage of the discussions. *See* notes under rule 30, *below*.

The President has, if necessary, a casting vote—*see* s. 64 (4) of the Government of India Act, 1915, *ante*.

13. Any Member may ask for any papers or returns connected with any Bill before the Council. The President shall determine, either at the time or at the meeting of the Council next following, whether the papers or returns asked for can be given. Papers and returns.

14. Communications on matters connected with any Bill before the Council may be addressed, either in the form of a petition to the Governor General in Council, or in a letter to the Secretary, and must in either case be sent to the Secretary. Ordinarily, such communications will not be answered. Communications as to pending Bills.

Except in the case of the High Court at Fort William, such communications shall ordinarily be sent through the Local Government.

The British Indian Association and the European and Anglo-Indian Defence Association have also been excepted. *See* the notes of September, 1893, in the papers relating to Act IV of 1893, and the notes of March 1893, in those relating to Act I of 1895.

15. The Secretary shall either cause such communications to be printed and send a copy to each Member, or circulate them for the perusal of each Member. Circulation of communications.

### *Part III.—Introduction and Publication of Bills.*

The rules contained in Parts III to VI indicate the stages which must ordinarily be passed through before a *contentious* measure becomes law. These may be thus described categorically :—

(1) Motion, after due notice, for leave to introduce a Bill followed by its formal introduction and publication for criticism. This corresponds with the practice in Parliament up to the first reading.

(2) Reference of the Bill, with any opinions received, to a Select Committee. This corresponds with the second reading in Parliament and the motion that a Bill be committed.

(3) Consideration in Council of the Select Committee's Report, and of any further amendments that may be brought forward. This corresponds with the third reading in Parliament.

(4) Motion, as in Parliament, that the Bill, as amended, be passed.

(5) Signature of the President to the Bill as passed, and of the Governor General by way of assent, followed by its final publication as an Act.

In the case of a *non-contentious* project some of these steps may be omitted ; and r. 44, below provides for this. There is, for instance, often no need for waiting for such a measure to be criticised, or for referring it to a Select Committee, and it may be accepted without amendment.

Again, it is sometimes necessary to pass a Bill without delay, and the rules have been suspended so completely as to allow a Bill to pass through the Council and become law at a single sitting. But "no law, except one arising out of pressing urgency, should be passed without full opportunity for mature deliberation and discussion, and the intervals of discussion should be such as to allow Members of Council adequate opportunity of reflection and inquiry"—see para. 17 of the despatch from the Secretary of State (Sir C. Wood, afterwards Lord Hallifax), dated the 9th August, 1861, in Appendix II, *post*.

For Private Bill legislation, as known at Westminster, there is no special provision beyond that contained in r. 16 below, most of the matters which are dealt with in that way in the United Kingdom, being made the subject of executive action in India.

Motion for  
leave to intro-  
duce Bills.

16. (1) Subject to the provisions of section 67 of the Government of India Act, 1915, and of these rules, any <sup>5 and 6 Geo.</sup> Member may move at a meeting of the Council for leave to <sup>5, c. 61.</sup> introduce a Bill, but no such motion shall be made until after the expiry of one month or, if the President so directs, of such further period not exceeding in all two months, from the date on which a copy of the Bill and a full Statement of Objects and Reasons has been furnished to the Secretary, and in the case of a Bill requiring the previous sanction of the Governor General under section 67 of the Government <sup>5 and 6 Geo.</sup> of India Act, 1915, until a copy of such sanction has also <sup>5, c. 61.</sup> been so furnished.

(2) Where the provisions of sub-rule (1) have been duly complied with, the Secretary shall set down the motion in the list of business for the first convenient day thereafter upon which the Council may meet.

(3) Unless the President otherwise directs, the Secretary shall cause every Bill, not being a Bill to which sanction has been refused under the aforesaid section, with the Statement of Objects and Reasons, to be printed, and a copy thereof to be sent to each Member at least three days before the meeting for which the motion for leave to introduce has been set down.

This rule was substituted by the amendments made in February, 1917. Under the old rule only three days' previous notice of a motion for leave to introduce was required. Additional Members can no longer claim to have

their Bills prepared by the Secretary, but ordinarily in practice Additional Members' Bills are revised and put into proper shape in the Legislative Department.

In connection with Additional Members' Bills, *see* r. 27 of the *Rules of Business*, *ante* and the note thereto; also r. 38 (7) below.

As to Statements of Objects and Reasons, *see* Macaulay's *Indian Minutes*, No. 1, at pages 4 and 5.

The rule applies to all Members, ordinary or additional, official or non-official.

It will be seen that a formal motion for leave to introduce a Bill has to be made, and that this may not be done until the measure contemplated by the mover has taken the shape of a Bill and is ready for introduction. It is usual for the introducer to make a full statement regarding the measure which he is bringing before the Council.

17. At any time after leave to introduce a Bill has been granted, the Member in charge of the Bill may introduce the Bill, and the Secretary shall then, if it has not already been printed and sent to each Member under rule 16 (3), cause the Bill, together with the Statement of Objects and Reasons, to be printed and shall furnish a copy to each Member. Introduction and printing of Bills.

If any of the Members are unacquainted with English, the Secretary shall also, if required, cause the Bill and the Statement of Objects and Reasons to be translated into Hindustani for their use.

This rule was substituted by the amendments made in February, 1917.

18. The Council may, at any time after a Bill has been introduced, direct that the Bill be published in such manner as the Council thinks fit. Publication of Bills.

When the motion for leave to introduce a Bill is carried, and the Bill has been formally introduced, the mover usually brings forward the further motion that the Bill be published in certain Gazettes.

19. When a Bill is introduced, or on some subsequent occasion, the Member in charge of it shall make one or more of the following motions:— Introduction of Bills.

- (a) that it be referred to a Select-Committee, or
- (b) that it be taken into consideration by the Council either at once, or at some future day to be then mentioned, or
- (c) that it be circulated for the purpose of eliciting opinion thereon.

With this rule—and especially in connection with clause (b)—r. 20 below should be read.

The practice is—*see* the note to r. 16 above—to introduce a Bill on the same day as that on which leave for its introduction is granted, and to make one of the motions indicated in this rule “on some subsequent occasion.”

Before a Bill is referred to a Select Committee, the orders contained in clause (a) of the Memorandum of the 20th September, 1911, quoted in the

notes to r. 19 of the *Rules of Business, ante*, should be observed, *i.e.*, it should be circulated with *précis* of opinions.

In moving that a Bill be referred to a Select Committee, the mover does not ordinarily make any observations, he having already explained the measure on its introduction; *see* the last note to r. 16, above. But the reference of a Bill to a Select Committee corresponds with the second reading in Parliament, and it marks the most important stage when the principle of the measure ought to be discussed and affirmed or rejected, according as the motion is carried or lost. Moreover, in view of the practice referred to in the Memorandum referred to above, the Council as a whole has generally no opportunity for criticising a measure until it is moved that it be referred to a Select Committee; and it is on that motion that the Members generally should be prepared with their remarks. In the event of its not being necessary to refer a Bill to a Select Committee at all, the opportunity for discussion will not arise till the motion is made that it be taken into consideration.

It follows that, when the motion that a Bill be referred to a Select Committee has been carried, it is usual to take it for granted that the principle of the measure is accepted, and that the details alone remain to be settled—*see* speeches by Sir A. E. Miller (Law Member) and Sir G. Evans in Council on the 2nd January, 1896. Thus Sir H. S. Maine (Law Member) said in Council on the 31st March, 1886, "I shall do well to depart from the course usually pursued when the motion is that the Report of the Select Committee be taken into consideration. That course I understand to be to assume that the principle of the Bill was affirmed when it was referred to the Committee, and to confine oneself to explaining and justifying the Committee's recommendations."

A departure from the usual practice was also made in the case of the Indian Registration (Amendment) Bill (*now* Act XV of 1917), on the suggestion of Mr. (Sir G.) Lowndes (Law Member), made in Council on the 21st March, 1916, that in view of the unfavourable nature of the majority of opinions received, it would be more advantageous to first discuss and revise the Bill in Select Committee, and then place it before the Council for discussion.

As to clause (c), the motion there contemplated is, as a matter of fact, never made, the reason being that it would entail an adjournment under r. 20 below. It is usual, however, to circulate all Bills on which opinions are desired immediately after their introduction and without an order under this clause. In connection with the submission by them of opinions on Bills, instructions were issued to all Local Governments and Administrations by Leg. Dep. letter Nos. 547—558, dated 9th March, 1899, and again by that Department's letter No. 4087, dated 14th November, 1916.

Preliminary  
circulation of  
Bills.

20. No such motion shall be made until after a copy of the Bill and a copy of the Statement of Objects and Reasons have been furnished to each Member. Any Member may object to the motion unless such copies have been furnished to him at least seven days previously; and such objection shall prevail unless the President, in exercise of his power to suspend any of these rules, allows the motion to be made.

As to suspension of the rules in this connection, *see* the introductory note to Part III, above.

Discussion of  
Bills.

21. On the day on which such motion is made, or on any subsequent day to which the discussion is postponed, the principle of the Bill and its general provisions may be discussed.

22. When any motion mentioned in rule 19 is carried, the Bill shall, together with a Statement of its Objects and Reasons, if not already published on a motion under rule 18, be published in English in the *Gazette of India*. Gazetting and publication of Bills.

The Bill and Statement shall also, if publication has not already been directed, be published in such official Gazettes and in such vernacular languages (if any) as the Council in each case decides to be necessary for the purpose of giving notice to the communities affected by the Bill.

For this purpose, the Council shall make an order at the meeting at which such motion is carried, and may from time to time, on the motion of any Member, vary or cancel such order.

23. The Governor General, if he sees fit, may order the publication of a Bill, together with the Statement of Objects and Reasons which accompanies it, in such Gazettes and languages as he thinks necessary, although no motion has been made for leave to introduce the Bill. Further publication by order.

In that case, it shall not be necessary to move for leave to introduce the Bill; and, if the Bill be afterwards introduced, it shall not be necessary to publish it again.

A very recent instance of publication under this rule is that of the Bill to consolidate and amend the law relating to Income-tax in the *Gazette of India*, Pt. V, p. 138, Oct., 1917.

It would seem, however, that this rule ought not to be interpreted so as to warrant such prior publication of a measure which has been reported to the India Office under r. 26 of the *Rules of Business*, ante, before the approval, express or tacit, of the Secretary of State has been obtained. See Leg. Dep. Register No. 1165 of 1903.

A Statement is kept of Bills published by order of the Governor General under this rule—see App. XII, No. 21, Pt. III, *post*.

#### *Part IV.—Select Committees.*

24. The Law Member shall be a member of every Select Committee. Composition of Select Committees.

The other members of every Committee shall be named by the Council when the Bill is referred, or at any subsequent meeting.

The Law Member and, in his absence, the Member in charge of the Bill, shall be Chairman of the Committee, and in the case of an equality of votes, the Chairman shall have a second or casting vote.

A Select Committee usually consists of an uneven number of Members varying in accordance with the importance of the Bill referred.

Members of Select Committees are, in accordance with the views expressed in the Executive Council on the 20th July, 1900,—see Leg. D.p. Misc. File Register No. 236 of 1902,—invited to submit their amendments in print for consideration before each meeting. This is done in the notice

fixing the time of meeting. In the event of an important amendment being proposed without such notice, it is always open to the Chairman to postpone its consideration.

Reports of  
Select Com-  
mittees.

25. After publication of a Bill in the *Gazette of India*, the Select Committee to which the Bill may have been referred, shall make a report thereon.

Such report shall be made not sooner than three months from the date of the first publication in the *Gazette of India*, unless the Council orders the report to be made sooner.

Reports may be either preliminary or final.

The Select Committee shall in their report state whether or not, in their judgment, the Bill has been so altered as to require re-publication, whether the publication ordered by these rules or by the Council has taken place, and the date on which the publication has taken place, or, where publication in more than one Gazette or in more than one language is ordered, the date on which the publication in each such Gazette and each such language has taken place.

If, in the judgment of the Committee, the Bill has been so altered as to require re-publication, the Secretary shall send a copy of the altered Bill to the Secretary of the Department to which it pertains.

When the Committee recommend the re-publication of a Bill which was originally ordered by these rules or by the Council to be published in more than one Gazette or in more than one language, they shall, in the absence of anything to the contrary in their report, be taken to recommend that the Bill be re-published in every such Gazette and every such language.

If the Committee are of opinion that it is unnecessary to re-publish the Bill in any such Gazette or in any such language, they shall, in their report, state the grounds of their opinion.

As to the principle of a Bill referred to a Select Committee, *see* the notes to r. 19, above.

Where, after the reference of a Bill to a Select Committee, the Government of India desire to extend its scope, the practice is for the Executive Department concerned to issue a further Official Memorandum to the Legislative Department, such Official Memorandum being made a *Paper to the Bill* and laid before the Committee.

In the case of the Excise Act, 1893 (XII of 1896), the Select Committee prepared a Consolidating Bill and proposed its substitution for the Amending Bill committed to it. *See* Leg. Dep. A Pros., March, 1896, Nos. 321-347.

For recent instances of an Amending Bill being converted by the Select Committee into a Consolidating and Amending Bill, *see* Papers relating to the Cantonments Act, 1910, and the Whipping Act, 1909; *see* notes in Leg. Dep. Pro., August, 1910, Nos. 35-45 at pp. 11-12,

After a Bill has been reported upon by a Select Committee, the Report should be circulated to the Members of the Executive Council and brought before a meeting of that Council before it is taken into consideration by the Legislative Council. See the order contained in clause (b) of the Memorandum of the 20th Sept., 1911, quoted in the notes to r. 19 of the *Rules of Business, ante*.

For form of Report of Select Committee, see App. XII, No. 18, *post*.

26. The Secretary shall cause every report of a Select Committee to be printed, and shall send a copy of such report to each Member, and shall cause the report, with the amended Bill, to be published in the *Gazette of India*. Printing and publication of Reports.

If any Member present is unacquainted with English, the Secretary shall also, if requested, cause the report to be translated into Hindustani for his use.

The word "present" is probably meant to indicate general attendance during the current Session of the Council, and not presence at any particular meeting.

27. The report of the Select Committee on a Bill shall be presented to the Council by the Member in charge of the Bill, and shall be taken into consideration by the Council as soon as conveniently may be; but any Member may object to its being so taken into consideration when he has not been furnished for a week with a copy of the report; and such objection shall prevail, unless the President, in exercise of his power to suspend any of these rules, allows the report to be taken into consideration. Presentation of Reports.

See the notes to rr. 19 and 25 above. It is not usual, but it is sometimes convenient, to make a statement when presenting the Report of a Select Committee; but when such a statement is made, it should be merely explanatory, and not of a kind calculated to raise a debate. See the remarks of Sir H. S. Maine (Law Member) quoted in the notes to r. 19 above. *Discussion on the Report and the Bill ought to be deferred until the motion is made that it be taken into consideration.*

### *Part V.—Consideration and Amendment of Bills.*

28. When a Bill is taken into consideration by the Council, any Member may propose an amendment of such Bill. Proposal of amendments.

Amendments must, therefore, be moved after the motion that "the Bill be taken into consideration" is agreed to: and this holds equally where a Member wishes to move without notice. See Proceedings in Council on the 10th March, 1899, in connection with the Currency Notes Forgery Bill.

29. If notice of such amendment has not been sent to the Secretary at least three days before the meeting of the Council at which the Bill is to be considered, any Member may object to the moving of the amendment; and such objection shall prevail, unless the President, in exercise of his power to suspend any of these rules, allows the amendment to be moved. Notice of amendments.



The Secretary shall, if time permits, cause every notice of amendment to be printed, and send a copy for the information of each Member.

If any Member present is unacquainted with English, the Secretary shall also, if requested, cause every such notice to be translated into Hindustani for his use.

Three days' (not *clear days*) notice is required by this rule: that is to say, the notice must reach the Secretary before 11 A.M. on the third day before the meeting. When a notice is received late, it should be accepted, but it ought not to be included in the list of business without the permission of the President. It is the practice to issue, with such permission, a revised or supplementary list including the amendment.

Occasionally notice of an amendment to be proposed on behalf of the Government is given informally in Council, the Member concerned intimating that it is intended to move such and such an amendment at such and such a meeting. See the proceedings in Council in connection with the Indian Penal Code and Criminal Procedure Code Bills in 1898.

An amendment of an amendment may be moved in the course of discussion, and notice of it is not required.

The word "present" in para. 3 of this rule refers to general attendance at the current Session of the Council, and not to presence at a particular meeting of that Session. Cf. r. 26, and see the note thereto.

Order of  
amendments.

**30.** Amendments shall ordinarily be considered in the order of the clauses to which they respectively relate.

Where an amendment of an amendment is moved in the course of discussion, the second amendment is put first. If it be lost, the original amendment is then put. If it be agreed to, the original amendment, of course, falls to the ground and is not put at all.

Amendments should be put to the Council separately; they may be explained *en bloc*, but should not be so voted upon—see Proceedings in Council on the 20th January, 1899, in connection with the Indian Stamp Bill of that year.

There is nothing in these Rules to prevent an amendment which has been *rejected* being moved again. Thus, after the rejection of an amendment that clause 34 of the Indian Life Assurance Companies Bill as amended by the Select Committee be omitted, the Member in charge of the Bill moved the same amendment himself, and the clause was omitted from the Bill. See Proceedings of Council relating to the Indian Life Assurance Companies Act, 1912.

Submission  
of Bills  
clause by  
clause.

**31.** Notwithstanding anything in the foregoing rules, it shall be in the discretion of the President, when a motion that a Bill be taken into consideration has been carried, to submit the Bill or any part of the Bill to the Council section by section. When this procedure is adopted, the President shall call each section separately, and, when the amendments relating to it have been dealt with, shall put the question "that this section, or (as the case may be) this section as amended, stand part of the Bill."

It is more correct to speak of the "clauses" of a Bill and the "sections" of an Act.

Re-publication  
or recommit-

**32.** Any Member may move that a Bill, which has been amended by the Council or by a Select Committee, be re-

published or re-committed, and, if the Council so decide, the President may order the Bill to be re-published or re-committed, as the case may be. of amended Bills.

33. If no amendment be made when a Bill is taken into consideration by the Council, the Bill may at once be passed. Passing of Bills.

If any amendment be made, any Member may object to the passing of the Bill at the same meeting; and such objection shall prevail, unless the President, in exercise of his power to suspend any of these rules, allows the Bill to pass.

Where the objection prevails, the Bill shall be brought forward again at a future meeting, and may then be passed with or without further amendment.

In connection with the Stamp Bill of 1899, some formal amendments were moved and agreed to on the 20th January, 1899; but the Member in charge voluntarily postponed till next meeting the motion that "the Bill, as amended, be passed."

#### *Part VI.—Passing of Bills and Publication of Acts.*

34. When a Bill is passed by the Council, a copy thereof shall be signed by the President, and, when the Governor General has declared his assent thereto, such copy shall be signed by the Governor General, and the Bill shall be published as soon as possible in the official Gazette, under the signature of the Secretary, as an Act of the Governor General in Council. Authentication and publication of Acts.

Such publication shall be made in the *Gazette of India* in English and in the official Gazettes of the Local Governments in English and in such vernacular languages spoken in the territories subject to such Governments respectively as may be ordered by the Council or directed by the Local Government:

Provided that, when the Act does not apply to the whole of British India, it shall be published only in the *Gazette of India* and in the Gazettes of the Local Governments to whose territories it applies.

For form of recording the passing of a Bill and the assent of the Governor General thereto, see App. XII, No. 12, *post*.

Publication in French in the *Gazette of India* and in some or all of the local official Gazettes is discretionary. Subject to the arrangements for translation in the Legislative Department of the Government of India, which will be referred to later on, the question of translation into the vernacular is left to the discretion of the Local Governments concerned, unless the Council issues express orders on the subject.

Local Governments are required to furnish to the Legislative Department annual statements regarding the publication and translation of Acts in the form given in App. XII, No. 20, *post*.

As to the arrangements made for the translation and transliteration of Bills and Acts, *see* Legislative Department's letter No. 2234—2246, dated the 24th June, 1913, Pros. July, 1913, Nos. 58—80.

*Part VII.—Duties of Secretary.*

Lists of  
business.

**35.** At least two days before each meeting of the Council, the Secretary shall send to each Member a list of the business to be brought forward at such meeting.

Subject to the provisions of rule 29, no business shall be entered by the Secretary in a list, unless notice thereof has been given to him at least three days before the meeting of the Council to which the lists relate :

Provided that business may be added to the list at any time before a meeting under the special orders of the President.

The practice is to circulate, about a week before each meeting of Council, a memorandum of the list of business to be brought forward at such meeting. In accordance, as far as possible, with any suggestions that may be received in time, the list is revised and submitted to the Governor General for approval on the third day preceding the date fixed for the meeting. On the Governor General's orders the final list is then prepared and notified to all the Members attending during the current Session.

As to late notices of amendments, *see* the notes to r. 29 above.

On the day before each meeting a spare set of the relevant papers, together with a copy of the list of business, should be sent to each Member who is to make any motion included in the list—*see* Leg. Dep. Office Order, dated the 31st January, 1902.

Preparation of  
Journal.

**36.** The Secretary shall keep a journal, in which all the Proceedings of the Council shall be fairly entered.

The journal shall be submitted after each meeting to the President for his confirmation and signature, and, when so signed, shall be the record of the proceedings of the Council.

The Journal has been discontinued.

Report of  
proceedings.

**37.** The Secretary shall also cause to be prepared a full report of the proceedings of the Council at each of its meetings, and publish it in the *Gazette of India* as soon as practicable. He shall send a copy of such report to each Member and also to the Permanent Under-Secretary of State for India.

For form of full report, *see* the example reproduced in App. XII, No. 19, *post*.

Other duties  
of Secretary.

**38.** In addition to the other duties specially required by these rules, it shall be the duty of the Secretary—

*First*, to draft all Bills originated by the Government of India, the Statements of their Objects and Reasons and the Reports of the Select Committee to which such Bills are referred ;

*Second*, to take charge of the copies of the Bills signed by the Governor General and of all the other records of the Council;

*Third*, to keep the books of the Council;

*Fourth*, to keep a list of the business for the time being before the Council;

*Fifth*, to superintend the printing of all papers printed in pursuance of these rules;

*Sixth*, to assist the Council and all Committees in such manner as they may direct;

*Seventh*, to send to the Secretary of the Department to which the Bill pertains any Bill which an Additional Member has obtained leave to introduce under rule 16;

*Eighth*, to examine all Bills deposited by Additional Members, and report to the President on those which contain clauses trenching on subjects coming within section 19 or section 22 of the Indian Councils Act, 1861;<sup>1</sup>

*Ninth*, to write all letters which the Council or the President, or any Select Committee, or the Law Member directs to be written.

24 and 25  
Vict., c. 67.

For form of list of pending business, *see* App. XII, No. 21, *post*. The list is revised and re-issued from time to time, copies being supplied to all the Members. A confidential statement showing what Bills have been prepared in the Legislative Department unofficially and are still under consideration has lately been added to the copies supplied to the Members of the Executive Government only.

39. It shall be the duty of the Secretary to cause to be <sup>Translation.</sup> translated into Hindustani, Bills, Statements of Objects and Reasons, Reports of Select Committees, and amendments of Bills, to cause papers to be explained to Members unacquainted with English, and otherwise to assist them in such manner as they may require.

Important Bills are always, unless time does not permit, translated into Urdu and transliterated into Hindi by the Legislative Department for circulation. As to translation *see* notes to r. 34, above.

### *Part VIII.—Miscellaneous.*

40. Strangers may be admitted into the Council Chamber during the sittings of the Council on the order of the President. Application for order of admission is to be made through a Member to the Secretary at least two days before <sup>Admission of strangers.</sup>

<sup>1</sup> Printed in Appendix I, *post*. *See* now ss. 65 and 67 of the Government of India Act, 1915, *ante*.

the meeting, and the order, if made, shall be sent to such Member.

It is not the practice to trouble the President for orders on such applications ; but the Secretary disposes of them himself, and issues tickets to as many applicants as is possible with due regard to the exigencies of space.

As to the dress of Indian gentlemen attending as visitors, see Legislative Department's Miscellaneous Register No. 345 of 1903.

Withdrawal  
of strangers.

41. The President, on the motion of any Member, may direct at any time during a sitting of the Council that strangers shall withdraw.

Publication  
and sale of  
papers.

42. Any paper relating to any measure before the Council may be published by order of the President.

Copies of papers so published shall be sold at such rate as may be fixed by the Secretary.

Dropped  
Bills.

43. Any Bill respecting which no motion has been made in the Council for two years may, by order of the President, be removed from the list of business.

This rule should be systematically enforced in accordance with the views expressed in the Executive Council on the 20th July, 1900—see Leg. Dep. Misc. File Register No. 236 of 1901.

Unless this course be taken, a motion for leave to withdraw a Bill is required. See the Proceedings in Council on the 1st July, 1897, in connection with the Burma Municipal Bill of that year.

Suspension of  
rules.

44. The President, for sufficient reason, may suspend any of the foregoing rules.

In practice the President never acts *suo motu* under this rule : he is always moved to do so when suspension is desired. In this connection, see the Introductory note to Pt. III, *ante*.

In connection with the reporting of speeches, the following procedure is observed—Members are requested to make over to the Secretary or to the official reporter a copy (preferably the copy actually used at the meeting) of every speech delivered by them in the Legislative Council which may have been previously printed, typed or written. Should the public press require a copy of any such speech, the Legislative Department arranges to supply it as early as practicable.

So much of the draft of the official report of each meeting of Council as concerns a speaker at the meeting is sent to him with the following notice printed on a red (or urgent) slip :—

“The report of the debate goes to press on \_\_\_\_\_ at P. M., and this proof is submitted in order that the Hon'ble Member may, if he desires, have an opportunity of correcting it.”

## RULES FOR THE DISCUSSION OF THE ANNUAL FINANCIAL STATEMENT IN THE INDIAN LEGISLATIVE COUNCIL.<sup>1</sup>

The following rules were made by the Governor General<sup>1</sup> in Council with the sanction of the Secretary of State in Council under<sup>2</sup> section 5 of the Indian Councils Act, 1909 (9 Edw. 7, c. 4) on the 15th November 1909.<sup>3</sup> The rules were recently amended and the amendments have been incorporated.

Government of India's Despatch, Home Department, Public No. 21, dated 1st October, 1908, paragraphs 61—65, 73 and 74 and Lord Morley's Despatch, Confidential, Public No. 193, dated 27th November, 1908, paragraph 31 and Home Department Resolution, Public No. 4213, dated 15th November, 1909, *Gazette of India*, 1909, Pt. I, p. 1609, paragraph 20, may be referred to. As to the recent amendments made in 1918, see Government of India's Despatch, Leg. Dep. No. 11, dated 16th November, 1917, A. Pros. December 1917, No. 8 and March, 1918, Nos. 3—8; see also Notfn. No. 14, dated 7th February 1918, in *Gazette of India*, 1918.

### DEFINITIONS.

#### 1. In these rules—

##### (1) "President" means—

- (a) the Governor General, or
- (b) the President nominated by the Governor General in Council under section 6 of the Indian Councils Act, 1861<sup>4</sup>, or
- (c) the Vice-President appointed by the Governor General under section 4 of the Indian Councils Act, 1909<sup>4</sup>, or
- (d) the Member appointed to preside under rule 27;

As to the President see now s. 64 (3) of the Government of India Act, 1915, *ante*. Those provisions of s. 6 of the Indian Councils Act, 1861, which related to the appointment of a President during the Governor General's absence in any other part of India have not been reproduced by the Act of 1915—see note to s. 42 of that Act, *ante*.

As regards the Vice-President and the Senior Ordinary Member of Council, see ss. 38, 42 and 64 (3) of the Act of 1915 *ante* and the notes thereunder.

##### (2) "Member in charge" means the Member of the Council of the Governor General to whom is allotted the

<sup>1</sup> The Legislative Council of the Governor General is referred to in the Government of India Act, 1915, as the Indian Legislative Council—see s. 63, *ante*.

<sup>2</sup> See now s. 67 (3) of the Government of India Act, 1915, *ante*.

<sup>3</sup> See Notification No. 23, dated 15th November, 1909, in *Gazette of India Extraordinary*, dated the 15th November, 1909, p. 436.

<sup>4</sup> Printed in Appendix I, *post*.<sup>1</sup>

business of the Department of the Government of India to which the subject under discussion belongs, and includes any Member to whom such Member in charge may delegate any function assigned to him under these rules ;

(3) " Finance Member " means the Member in charge of the Finance Department of the Government of India ;

(4) " Secretary " means the Secretary to the Government of India in the Legislative Department, and includes the Deputy Secretary and every person for the time being exercising the functions of the Secretary ;

(5) " Financial Statement " means the preliminary financial estimates of the Governor General in Council for the financial year next following ; and

(6) " Budget " means the Financial Statement as finally settled by the Governor General in Council.

For definitions of " financial year " see s. 22 of the Interpretation Act, 1889 (52 & 53 Vict., c. 63), and s. 3 (19) of the General Clauses Act 1897 (X of 1897).

## A.—THE FINANCIAL STATEMENT.

### *General order of discussion.*

2. (1). On such day as may be appointed in this behalf by the Governor General, the Financial Statement with an Explanatory Memorandum shall be presented to the Council every year by the Finance Member, and a printed copy shall be given to every Member.

(2) No discussion of the Financial Statement shall be permitted on such day.

It will be observed that the Explanatory Memorandum is not a part of the Financial Statement ; see definition of " Financial Statement " in rule 1 (5). See notes under rule 3, *below*.

3. (1) On such later day as may be appointed in this behalf by the Governor General, the first stage of the discussion of the Financial Statement in Council shall commence.

(2) On this day, after the Finance Member has stated any changes in the figures of the Financial Statement which circumstances may since have rendered necessary and has made any explanations of that Statement which he may think fit, a general discussion of the Financial Statement shall take place.

(3) At such discussion any Member shall be at liberty to offer any observations he may wish to make on the Statement

as a whole, or on any question of principle involved, but no Member shall be permitted to move any resolution nor shall the Statement be submitted to the vote of the Council.

(4) The Finance Member shall have a general right of reply at the end of the discussion.

(5) It shall be open to the President, if he thinks fit, to prescribe a time limit for speeches.

For the origin of the division into stages of the discussion, *see* Mr. (Sir W.) Meyer's note of 26th May, 1909, paragraph 30, Finance Dep. Accounts, and Finance, A. Pro. April, 1910, Nos. 185 to 239. The first stage of the discussion usually commences about a week after the presentation of the Financial Statement. *See* Despatch, Home Dep., Public No. 21, dated 1st October, 1908, paragraph 68.

When the rules were amended in 1918, the discussion was divided into three stages instead of two (A Pros. Decr. 1917, No. 8 and March, 1918 Nos. 3-8).

**3A.** (1) On such day after the general discussion of the Financial Statement, as may be appointed in this behalf by the Governor General, the second stage of the discussion of the Financial Statement shall commence.

(2) On this day any Member shall be at liberty to move any resolution entered in his name in the list of business relating to any alteration in taxation, any new loan, or any additional grant to Local Governments, proposed or mentioned in such Statement or Explanatory Memorandum; and the Council shall thereupon proceed to discuss each such resolution in the manner hereinafter prescribed.

Copies of all Resolutions, as soon as they are received, are sent to the Finance Department; the other Executive Departments are supplied with copies of such of the Resolutions as relate to subjects which belong to them, respectively.

Rules 5 to 20 and 24 to 28 apply to the discussion of these Resolutions.

The ruling of His Excellency the President (Lord Hardinge) that "the communication to the press of questions which have not received the President's sanction is regarded as a serious measure and a breach of privilege" (Leg. Dep. Pro. A March, 1911, Nos. 190 and 191) is probably applicable also to the case of a Resolution.

4. (1) The third stage of the discussion of the Financial Statement shall commence as soon as may be after all the resolutions which may be moved as aforesaid have been disposed of.

(2) In this stage each head or group of heads specified in the statement contained in the Schedule appended to these rules as being open to discussion, shall be considered separately according to such grouping as the Member in charge may determine.

(3) The consideration of a particular head or group of heads shall be introduced by the Member in charge with



such explanations, supplementing the information contained in the Financial Statement, as may appear to him to be necessary.

(4) Any Member shall then be at liberty to move any resolution relating to any question covered by any such head or group of heads which may be entered in his name in the list of business, and the Council shall thereupon proceed to discuss every such resolution in the manner hereinafter prescribed.

The Resolutions must be such as are permissible under rule 5, and must be framed in accordance with rule 6; notice of every Resolution must be given as required by rule 7.

As regards the propriety of communicating to the press any proposed resolution, see last paragraph of notes under rule 3 above.

*Subjects excluded from discussion.*

5. No discussion shall be permitted in regard to any of the following subjects, namely:—

- (a) any subject removed from the cognizance of the Legislative Council of the Governor General by section 22 of the Indian Councils Act, 1861; or <sup>24 & 25 Vict., c. 67.</sup>
- (b) any matter affecting the relations of His Majesty's Government or of the Governor General in Council with any Foreign State or any Native State in India; or
- (c) any matter under adjudication by a Court of Law having jurisdiction in any part of His Majesty's Dominions.

With reference to rule 5 (a) see note under rule 3 (a) of the *Rules for the Discussion of matters of General Public Interest*, post.

The Government of a British Colony is not a Foreign State. See notes under rule 3 of the *Rules for the Discussion of matters of General Public Interest*, post.

*Resolutions.*

6. No resolution shall be moved which does not comply with the following conditions, namely:—

- (a) it shall be in the form of a specific recommendation addressed to the Governor General in Council;
- (b) it shall be clearly and precisely expressed and shall raise a definite issue;

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<sup>1</sup> Printed in Appendix I, post. See now s. 65 (2) of the Government of India Act, 1915, ante.

- (c) it shall not contain arguments, inferences, ironical expressions or defamatory statements, nor shall it refer to the conduct or character of persons except in their official or public capacity;
- (d) it shall not challenge the accuracy of the figures of the Financial Statement; and
- (e) it shall be directly relevant to some entry in the Financial Statement or Explanatory Memorandum.

As regards rule 6 (e) *see* note under rule 13 below.

7. A Member, who wishes to move a resolution, shall give notice in writing to the Secretary at least two clear days before the commencement of the stage of the discussion to which the resolution relates, and shall, together with the notice, submit a copy of the resolution which he wishes to move.

8. The President may disallow any resolution or part of a resolution without giving any reason therefor other than that in his opinion it cannot be moved consistently with the public interests, or that it should be moved in the Legislative Council of a Local Government.

A proposed resolution not complying with the provisions of rule 3A(2) or 4(2) as the case may be, and of rules 5 and 6 is out of order and there is inherent power to disallow it. *See* Mr. Macpherson's note, dated 30th September, 1911, in Leg. Dep. Official Diary No. 2275.

It will be observed that there is no express provision for the amendment of resolutions under these rules; the omission which was deliberately made is due no doubt to the fact that, owing to the shortness of the notice on which these resolutions have to be dealt with, it would not be practicable to have them amended. But notices of amendments are accepted and amendments are dealt with in the same way as resolutions.

9. (1) No discussion in Council shall be permitted in respect of any order of the President under rule 8.

(2) A resolution that has been disallowed shall not be entered in the proceedings of the Council.

10. Resolutions admitted by the President shall be entered in the list of business in such order as he may direct.

### *Discussion of Resolutions.*

10A. (1) A Member in whose name a resolution appears on the list of business shall when called on, either—

- (a) withdraw the resolution, in which case he shall confine himself to a mere statement to that effect; or
- (b) move the resolution, in which case he shall commence his speech by a formal motion in the terms appearing on the list of business.

(2) If the Member when called on is absent, the resolution standing in his name shall be considered to have been withdrawn.

The object of this rule is to prevent a Member, who intends to withdraw a resolution, from first expressing his views on its subject matter by way of preliminary observations and then withdrawing it before he sits down, thus depriving other Members of all opportunity of criticizing his remarks. Cf. rule 14, below.

11. (1) After the mover of a resolution has spoken, other Members may speak to the motion in such order as the President may direct, and thereafter the mover may speak once by way of reply.

(2) No Member shall speak more than once to any motion except with the permission of the President for the purpose of making an explanation :

Provided that the mover may speak in reply and the Member in charge may submit any final observations which he may wish to make.

The intention of this rule, which should be read with r. 15, is that, subject to the right of the President under rule 15 to address the Council before putting a question to the vote, the Member in charge should have the last word in every case. Leg. Dep. U. O. 490 of 1911. The wording of the rule was recently amended to make the intention clearer.

12. No speech shall exceed fifteen minutes in duration :

Provided that the mover of a resolution, when moving the same, the Member in charge when speaking for the first time, and with, the permission of the President, any other Member may speak for thirty minutes.

Under the Proviso the President may allow any Member to speak for thirty minutes in cases where he considers fifteen minutes insufficient.

13. The discussion of a resolution shall be limited to the subject of the resolution, and shall not extend to any matter as to which a resolution may not be moved.

The intention and effect of this rule read with rule 6 (e) is to restrict the discussion to genuine financial questions and not to permit Resolutions to be moved under these rules for the purpose of airing general grievances; but no rigid line can be drawn between a *bond fide* discussion of a question directly relevant to some entry in the Financial Statement or the Explanatory Memorandum, and a discussion of matters of any other character, and in every case the decision must be left to the discretion of the President. See Leg. Dep. U. O. 490 of 1911.

14. (1) A Member who has moved a resolution shall not withdraw the same except by leave of the Council.

(2) No discussion shall be permitted on a motion for leave to withdraw except with the permission of the President.

The object is to prevent the mover from speaking fully on his Resolution and then withdrawing it without any further discussion. Cf. rule 10 A, above.

15. When, in the opinion of the President, a resolution has been sufficiently discussed, he may close the discussion by calling upon the mover to reply and the Member in charge to submit any final observations which he may wish to make :

Provided that the President may in all cases address the Council before putting the question to the vote.

*See note under rule 11 above.*

16. When any resolution involving several points has been discussed, it shall be in the discretion of the President to divide the resolution and put each or any point separately to the vote as he may think fit.

The President may divide a Resolution into parts only for the purpose of putting each part to the vote separately. It is not the intention that a Resolution should be *discussed* in parts separately.

17. (1) Every question shall be resolved in the affirmative or in the negative according to the majority of votes.

(2) Votes may be taken by voices or by division, and shall be taken by division if any Member so desires.

(3) The President shall determine the method of taking votes by division.

The President has, if necessary, a casting vote, *see* the Government of India Act, 1915, s. 64, *ante*.

18. (1) The President may assign such time as with due regard to the public interest he may consider reasonable for the discussion of resolutions or of any particular resolution.

(2) Every resolution which shall not have been put to the vote within the time so assigned shall be considered to have been withdrawn.

Under this rule the President may reserve any meeting or meetings for the discussion of resolutions or any particular resolution, and if the resolution or resolutions set down for any meeting or meetings is not or are not reached, sub-rule (2) applies, *i.e.*, the resolution or resolutions are considered to have been withdrawn. *Cf.* rule 23 of the Rules for discussion of matters of General Public Interest, *post*.

19. Every resolution, if carried, shall have effect only as a recommendation to the Governor General in Council.

20. (1) When a question has been discussed at a meeting of the Council, or when a Resolution has been withdrawn under rule 14, no resolution raising substantially the same question shall be moved within one year.

(2) When a resolution has been disallowed under rule 8, no resolution raising substantially the same question shall be moved during the same Session.

#### B.—THE BUDGET.

21. (1) On or before the 24th day of March in every year the Budget shall be presented to the Council by the

Finance Member, who shall describe the changes that have been made in the figures of the Financial Statement, and shall explain why any resolutions passed in Council have not been accepted.

(2) A printed copy of the Budget shall be given to each Member.

(3) No discussion of the Budget shall be permitted nor shall it be submitted to the vote of the Council, but the President may make such observations in regard thereto as he may consider necessary.

#### C.—GENERAL.

22. (1) Every Member shall speak from his place, shall rise when he speaks and shall address the chair.

(2) At any time, if the President rises, any Member speaking shall immediately resume his seat.

23. (1) Any Member may send his speech in print to the Secretary not less than two clear days before the day fixed for the discussion of a resolution, with as many copies as there are Members, and the Secretary shall cause one of such copies to be supplied to every Member.

(2) Any such speech may, at the discretion of the President, be taken as read.

This rule by its wording is applicable only to speeches on resolutions. There would, however, be no objection to a Member sending in copies of his speech on the general discussion of the Financial Statement under rule 3(2), or to the President allowing such a speech to be taken as read.

24. (1) The President shall preserve order, and all points of order shall be decided by him.

(2) No discussion on any point of order shall be allowed, unless the President thinks fit to take the opinion of the Council thereon.

(3) Any Member may at any time submit a point of order to the decision of the President.

(4) The President shall have all powers necessary for the purpose of enforcing his decisions.

25. The Governor General may appoint a Member of the Council to preside in his place, or in that of the Vice-President, on any occasion on which the Financial Statement or any portion thereof is discussed in the Council.

This rule was made in exercise of the power conferred by section 5 (2) of the Indian Councils Act, 1909 (9 Edw. 7, c. 4). See now s. 67 (3) of the Government of India Act, 1915, *ante*.

26. The President, for sufficient reason, may suspend any of the foregoing rules.

# THE SCHEDULE.

*Heads open to or excluded from discussion under rule 4.*

REVENUE.		EXPENDITURE.	
Heads open to discussion.	Heads not open to discussion.	Heads open to discussion.	Heads not open to discussion.
I.—Land Revenue . . . . .	IV.—Stamps.	1.—Refunds and drawbacks . . . . .	2.—Assignments and Compensations.
II.—Opium . . . . .	VII.—Customs.	3.—Land Revenue . . . . .	13.—Interest on debt.
III.—Salt . . . . .	VIII.—Assessed Taxes.	4.—Opium . . . . .	23.—Ecclesiastical.
V.—Excise . . . . .	XI.—Tributes from Native States.	5.—Salt . . . . .	25.—Political.
VI.—Provincial Rates . . . . .	XVI.—A.—Courts.*	6.—Stamps . . . . .	27.—Territorial and Political Pensions.
IX.—Forest . . . . .	XXXVII.—Army.	7.—Excise . . . . .	38.—State Railways.†
X.—Registration . . . . .	XXXVIII.—Marine.	8.—Provincial Rates . . . . .	42.—Major Works : Interest on debt.
XII.—Interest . . . . .	XXXIX.—Military Works.	9.—Customs . . . . .	46.—Army.
XIII.—Post Office . . . . .	XL.—Works.	10.—Assessed Taxes . . . . .	46-A.—Marine.
XIV.—Telegraph . . . . .	XL.—Provincial revenue and revenue accruing from divided Provinces	11.—Forests . . . . .	47.—Military Works.
XV.—Mint . . . . .	XL.—Provincial revenue and revenue accruing from divided Provinces	12.—Registration . . . . .	47-A.—Special Defences.
XVI.—B.—Jails . . . . .	XL.—Provincial revenue and revenue accruing from divided Provinces	14.—Interest on other obligations . . . . .	All statutory charges.
XVII.—Police . . . . .	XL.—Provincial revenue and revenue accruing from divided Provinces	15.—Post Office . . . . .	All purely Provincial expenditure and expenditure accruing under divided heads in Provinces possessing Legislative Councils.
XIX.—Education . . . . .	XL.—Provincial revenue and revenue accruing from divided Provinces	16.—Telegraphs . . . . .	
XX.—Medical . . . . .	XL.—Provincial revenue and revenue accruing from divided Provinces	17.—Mint . . . . .	
XXI.—Scientific and other Minor Departments.	XL.—Provincial revenue and revenue accruing from divided Provinces	18.—General Administration†	
XXII.—Receipts in aid of Superannuation, etc.	XL.—Provincial revenue and revenue accruing from divided Provinces	19-A.—Courts of Law†	
XXIII.—Stationery and Printing.	XL.—Provincial revenue and revenue accruing from divided Provinces	19-B.—Jails . . . . .	
	XL.—Provincial revenue and revenue accruing from divided Provinces	20.—Police . . . . .	
	XL.—Provincial revenue and revenue accruing from divided Provinces	22.—Education . . . . .	
	XL.—Provincial revenue and revenue accruing from divided Provinces	24.—Medical . . . . .	

THE SCHEDULE—*contd.**Heads open to or excluded from discussion under rule 4—contd.*

REVENUE.		EXPENDITURE.	
Heads open to discussion.	<i>Heads not open to discussion.</i>	Heads open to discussion.	<i>Heads not open to discussion.</i>
XXIV.—Exchange . . .		26.—Scientific and other Minor Departments.	
XXV.—Miscellaneous . . .		28.—Civil Furlough and Absentee Allowances.	
XXVI.—State Railways . . .		29.—Superannuation Allowances and Pensions.	
XXVIII.—Subsidised Companies.		30.—Stationery and Printing.	
XXIX.—Irrigation, Major Works.		31.—Exchange.	
XXX.—Minor Works and Navigation.		32.—Miscellaneous.	
XXXI.—Civil Works.		33.—Famine Relief.	
		34.—Construction of Protective Railways.	
		35.—Construction of Protective Irrigation Works	
		36.—Reduction or Avoidance of Debt.	
		40.—Subsidised Companies; Land, etc.	
		41.—Miscellaneous Railway Expenditure.	
		42.—Irrigation; Major Works—Working Expenses.	
		43.—Minor Works and Navigation.	
		45.—Civil Works.	
		48.—State Railways; Capital Expenditure not charged to Revenue.	
		49.—Irrigation Works; Capital Expenditure not charged to Revenue.	

\* Mainly court fees and fines.

† These heads include certain statutory charges, which will be excluded from debate.

‡ This head deals purely with interest, sinking funds and annuities.

## RULES FOR THE DISCUSSION OF MATTERS OF GENERAL PUBLIC INTEREST IN THE INDIAN LEGISLATIVE COUNCIL.

The following rules were made by the Governor General in Council with the sanction of the Secretary of State in Council under<sup>1</sup> section 5 of the Indian Councils Act, 1909 (9 Edw. 7, c. 4) on the 15th November, 1909<sup>2</sup>.

Government of India's Despatch, Home Department, Public No. 21, dated 1st October, 1908, paragraphs 57, 58 and 59, and Lord Morley's despatch, Confidential, Public, No 193, dated 27th November, 1908, paragraphs 27, 28 and 29 and Home Department Resolution, Public No. 4213, dated 15th, November 1909, *Gazette of India*, 1909, Part I, page 1909, paragraph 20, may be read.

The rules were recently amended under s. 67(3) of the Government of India Act, 1915, and the amendments have been incorporated—see Leg. Dep. A Pros. Decr. 1917, No. 8 and March, 1918, Nos. 3-8.

### *Definitions.*

#### 1. In these rules—

##### (1) "President" means—

- (a) the Governor General, or
- (b) the President nominated by the Governor General in Council under section 6 of the Indian Councils Act, 1861,<sup>3</sup> or
- (c) the Vice-President appointed by the Governor General under section 4 of the Indian Councils Act, 1909,<sup>3</sup> or
- (d) the Member appointed to preside under rule 27 ;

As to the "President" see the note under r. 1 of the Financial Statement Rules, *ante*.

As regards the Vice-President and the Senior Ordinary Member of Council, see ss. 38, 42 and 64 (3) of the Act of 1915, *ante*, and the notes thereunder.

(2) "Member in charge" means the Member of the Council of the Governor General to whom is allotted the business of the Department of the Government of India to which the subject under discussion belongs, and includes any Member to whom such Member in charge may delegate any function assigned to him under these rules ; and

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<sup>1</sup> See now s. 67 (3) of the Government of India Act, 1915, *ante*.

<sup>2</sup> See Notification No. 24, dated 15th November 1909, in *Gazette of India*, Extraordinary, dated 15th November, 1909, p. 441. For recent amendments see Notfn. No. 15, dated 7th February, 1918 in *Gazette of India* of that date.

Printed in Appendix I. *post*.



(3) "Secretary" means the Secretary to the Government of India in the Legislative Department, and includes the Deputy Secretary and every person for the time being exercising the functions of the Secretary.

*Matters open to discussion.*

2. Any matter of general public interest may be discussed in the Council subject to the following conditions and restrictions.

3. No such discussion shall be permitted in regard to any of the following subjects, namely :—

- (a) any subject removed from the cognizance of the Legislative Council of the Governor General by section 22 of the Indian Councils Act, 1861 ; or
- (b) any matter affecting the relations of His Majesty's Government or of the Governor General in Council with any Foreign State or any Native State in India ; or
- (c) any matter under adjudication by a Court of Law having jurisdiction in any part of His Majesty's Dominions.

It has been proposed to add to clause (a) so as to bring within its scope repeals and alterations of the Council Regulations or of the Rules *re* Budget Discussion, Discussion of matters of Public Interest or the asking of Questions, which are expressly excluded from the cognizance of the Council by s. 63 (6) and (7) and s. 67 (3), respectively.

The mere fact that a subject is one on which, by reason of section 22 of the Indian Councils Act, 1861 (*now* s. 65 of the Government of India Act, 1915, *ante*), the Legislative Council cannot legislate does not bring the subject within the scope of rule 3 (a) which has been held to refer only to cases where there is a proposal *necessitating legislation* to give it effect. Where, therefore, no legislation need be undertaken if the Resolution is adopted by the Council, owing to the fact that the legislation necessary to give effect to the resolution has already been undertaken, rule 3 (a) would not bar discussion of the resolution by reason of the fact that if legislation had been necessary, it would not have been within the cognizance of the Council to undertake it—Leg. Dep. Pro. February, 1911, Nos. 49—56 ; see also *ibid* Nos. 1—5. This view was confirmed in 1917—B. Pros. Oct. 1917, Nos. 52—53. A proposal which has for its object the laying down of a particular procedure (*e.g.*, previous consultation with Legislative Council, or previous publication of schemes to that Council) to be followed by the Government in any branch of the administration involves the partial suspension, at least for a time, of the executive authority of Government and as such affects section 39 of the Government of India Act, 1883 (*see now* s. 33 of the Government of India Act, 1915, *ante*), which vests the "superintendence, direction and control" in the Government of India, and therefore falls within the terms of rule 3 (a) Leg. Dep. Pro. March 1912, Nos. 104—108.

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<sup>1</sup> Printed in Appendix I, *post*. See now s. 65 (2) of the Government of India Act, 1915, *ante*.

RULES FOR DISCUSSION OF MATTERS OF GENERAL PUBLIC INTEREST. 203

As to the meaning of the word "affecting" in s. 65 (2) of the Government of India Act, 1915, and the interpretation of r. 3 (a), *see* B Pros., Octr. 1917, Nos. 52-53.

The Government of a British Colony is not a Foreign State. *See* Leg. Dep. B Pro., March, 1910, Nos. 144 to 148.

*Resolutions.*

4. Subject to the restrictions contained in rule 3, any Member may move a resolution relating to a matter of general public interest:

Provided that no resolution shall be moved which does not comply with the following conditions, namely:—

- (a) it shall be in the form of a specific recommendation addressed to the Governor General in Council;
- (b) it shall be clearly and precisely expressed, and shall raise a definite issue; and
- (c) it shall not contain arguments, inferences, ironical expressions or defamatory statements, nor shall it refer to the conduct or character of persons, except in their official or public capacity.

The recommendation must be one which the Governor General in Council may give effect to. *See* the Law Member's note in file Register No. 187 of 1911 at page 4.

5. A Member, who wishes to move a resolution, shall give notice in writing to the Secretary, at least fifteen clear days before the meeting of the Council at which he desires to move the same, and shall, together with the notice, submit a copy of the resolution which he wishes to move:

Provided that the President may allow a resolution to be moved with shorter notice than fifteen days, and may, in any case, require longer notice, or may extend the time for moving the resolution.

This rule is not construed as entitling a Member to have his Resolution put down for any particular meeting. The rule should be read with rule 23, below—*see* Deposit Pros. April, 1918, No. 20.

An adjourned meeting is a separate meeting within the meaning of this rule. Thus a notice which is short by just one day for a meeting would be in time for the meeting held on the next following day if the meeting happens to be adjourned by reason of the business on the list not having been finished. A fresh list of business including the resolution may be issued for the adjourned meeting. *See* file Register No. 188 of 1911.

As soon as notice of a resolution is received, a copy of the resolution with the notice is communicated confidentially to the Members of the Executive Council and the Private Secretary to the Viceroy.

6. (1) The Secretary shall submit every resolution of which notice has been given to him in accordance with rule 5 to the President, who may either admit it or, when any

resolution is not framed in accordance with rule 4, cause it to be returned to the Member concerned for the purpose of amendment.

(2) If the Member does not, within such time as the President may fix in this behalf, resubmit the resolution duly amended, the resolution shall be deemed to have been withdrawn.

Every resolution of which notice has been given to the Secretary whether in due time or not, is submitted to the President who has power under the proviso to rule 5 to admit a resolution although the notice is shorter than what is required by the rule.

Where a proposed resolution does not comply with some provision of rule 4, and the defect can be removed by amendment, the usual practice is for the Secretary to communicate with the Member suggesting necessary amendments, and asking him whether he accepts the amendments.

Every resolution with the Legislative Department's remarks thereon is sent for consideration as an executive measure to the Department to which the subject-matter of the Resolution belongs, and after return from that Department is submitted to His Excellency the President for orders. In important cases the Executive Department concerned submits the resolution to the Governor General under the Rules of Business, and the matter may then, under the Governor General's order, be brought up before and considered in Council before the file is returned to the Legislative Department; in such cases if the order on the file may be read as including an order by His Excellency either admitting or disallowing the Resolution, it is considered unnecessary to submit it again to His Excellency under this rule. *See Leg. Dep. Pros. March, 1912, Nos. 1-4, and 5-11.*

The two alternatives of admitting the Resolution and returning it for amendment which are mentioned in rule 6 (1) are evidently not meant to be exhaustive. The obvious intention of rules 3 and 4 is that the President has power to disallow a Resolution which offends against either of those rules. *See Leg. Dep. Pros., March, 1912, Nos. 104-108, for cases of Resolutions disallowed under rule 3 (a); see also notes under rule 7 of Question Rules, post.*

When the President has given his ruling on a resolution, no application for re-consideration of the ruling will be entertained. *See the orders of His Excellency the President on Mr. Mudholkar's memorial for the re-consideration of an order disallowing a Resolution. See Leg. Dep. B. Pro., March, 1912, Nos. 3-4.*

7. The President may disallow any resolution or part of a resolution without giving any reason therefor other than that in his opinion it cannot be moved consistently with the public interest, or that it should be moved in the Legislative Council of a Local Government.

8. (1) No discussion in Council shall be permitted in respect of any order of the President under rule 6 or rule 7.

(2) A resolution which has been disallowed shall not be entered in the proceedings of the Council.

9. Resolutions admitted by the President shall be entered in the list of business for the day in the order in which they are received by the Secretary :

Provided that the President may give priority to any resolution which he may consider to be of urgent public interest, or postpone the moving of any resolution.

As soon as a resolution is admitted circulars are issued by the Secretary to all Additional Members of the Council informing them of the exact terms of the resolution as admitted.

The principle underlying the ruling of His Excellency the President (Lord Hardinge) that "the communication to the Press of questions which have not received the President's sanction is regarded as a serious measure and a breach of privilege."—Leg. Dep. Pro. March, 1911, Nos. 190—191,—has also been applied to the case of a Resolution—see B. Pros., Sept. 1916, Nos. 143—145, and Nov. 1917, No. 25.

### *Discussion of Resolutions.*

10. The discussion of resolutions shall take place after all the other business of the day has been concluded.

10A. (1) A Member in whose name a resolution appears on the list of business shall, when called on, either—

(a) withdraw the resolution, in which case he shall confine himself to a mere statement to that effect; or

(b) move the resolution, in which case he shall commence his speech by a formal motion in the terms appearing on the list of business.

(2) If the Member when called on is absent, the resolution standing in his name shall be considered to have been withdrawn.

The object of this rule is to prevent a Member who intends to withdraw a resolution, from first expressing his views on it by way of preliminary observations and then withdrawing it, thus depriving other Members of all opportunity of criticising his remarks. *Cf.* rule 18, *below*.

11. (1) After the mover of a resolution has spoken, other Members may speak to the motion in such order as the President may direct, and thereafter the mover may speak once by way of reply.

(2) No Member shall speak more than once to any motion, except, with the permission of the President, for the purpose of making an explanation:

Provided that the mover may speak in reply and the Member in charge may submit any final observations which he may wish to make.

See notes under rule 11 of the Financial Statement Rules, *ante*, and r. 19 *below*.

12. No speech, except with the permission of the President, shall exceed fifteen minutes in duration:

Provided that the mover of a resolution, when moving the same, and the Member in charge, when speaking for the first time, may speak for thirty minutes.

13. (1) Every Member shall speak from his place, shall rise when he speaks, and shall address the chair.

(2) At any time, if the President rises, any Member speaking shall immediately resume his seat.

14. (1) Any Member may send his speech in print to the Secretary not less than two clear days before the day fixed for the discussion of a resolution, with as many copies as there are Members, and the Secretary shall cause one of such copies to be supplied to each Member.

(2) Any such speech may, at the discretion of the President, be taken as read.

15. The discussion of a resolution shall be limited to the subject of the resolution, and shall not extend to any matter as to which a resolution may not be moved.

16. When a resolution is under discussion, any Member may, subject to all the restrictions and conditions relating to resolutions specified in rules 3 and 4, move an amendment to such resolution :

Provided that an amendment may not be moved which has merely the effect of a negative vote.

17. (1) If a copy of such amendment has not been sent to the Secretary at least three clear days before the day fixed for the discussion of the resolution, any Member may object to the moving of the amendment ; and such objection shall prevail unless the President, in exercise of his power to suspend any of these rules, allows the amendment to be moved.

(2) The Secretary shall, if time permits, cause every amendment to be printed, and send a copy for the information of each Member.

18. (1) A Member who has moved a resolution or an amendment of a resolution shall not withdraw the same, except by leave of the Council.

(2) No discussion shall be permitted on a motion for leave to withdraw except with the permission of the President.

*See note under rule 14 of the Financial Statement Rules, ante, and rule 10A, above.*

19. When, in the opinion of the President, a resolution and any amendment thereto have been sufficiently discussed, he may close the discussion by calling upon the mover to reply and the Member in charge to submit any final observations which he may wish to make :

Provided that the President may in all cases address the Council before putting the question to the vote.

*See notes under rule 11, above.*

20. (1) When an amendment to any resolution is moved, or when two or more such amendments are moved, the President shall, before taking the sense of the Council thereon, state or read to the Council the terms of the original motion and of the amendment or amendments proposed.

(2) It shall be in the discretion of the President to put first to the vote either the original motion or any of the amendments which may have been brought forward.

21. When any resolution involving several points has been discussed, it shall be in the discretion of the President to divide the resolution and put each or any point separately to the vote as he may think fit.

*See notes under r. 16 of the Financial Statement Rules, ante.*

22. (1) Every question shall be resolved in the affirmative or in the negative according to the majority of votes.

(2) Votes may be taken by voices or by division, and shall be taken by division if any Member so desires.

(3) The President shall determine the method of taking votes by division.

### *General.*

23. (1) The President may assign such time as, with due regard to the public interests, he may consider reasonable for the discussion of resolutions or of any particular resolution.

(2) Every resolution which shall not have been put to the vote within the time so assigned shall be considered to have been withdrawn.

*See note under r. 5 above and under r. 18 of the Financial Statement Rules, ante. See also Deposit Pros. April, 1918, No. 20.*

*As regards the moving of resolutions during the Simla Session, see Extract from Despatch, dated 8th June, 1917, in Appendix VII, post.*

24. Every resolution, if carried, shall have effect only as a recommendation to the Governor General in Council.

25. (1) When a question has been discussed at a meeting of the Council, or when a resolution has been withdrawn under rule 18, no resolution or amendment raising substantially the same question shall be moved within one year.

(2) When a resolution has been disallowed under rule 7, no resolution raising substantially the same question shall be moved during the same Session.

*The application of the provisions of this rule to the case of a Resolution which has been withdrawn is limited to cases where the withdrawal is under rule 18, i.e., after the Resolution has been moved.*

26. (1) The President shall preserve order, and all points of order shall be decided by him.

(2) No discussion on any point of order shall be allowed unless the President thinks fit to take the opinion of the Council thereon.

(3) Any Member may at any time submit a point or order to the decision of the President.

(4) The President shall have all powers necessary for the purpose of enforcing his decisions.

27. The Governor General may appoint a Member of the Council to preside in his place, or in that of the Vice-President, on any occasion on which a matter of general public interest is discussed in the Council.

This rule was made in exercise of the power conferred by section 5 (2) of the Indian Councils Act, 1909 (9 Edw. 7, c. 4). See now s. 67 (3) of the Government of India Act, 1915, *ante*.

28. The President, for sufficient reason, may suspend any of the foregoing rules.

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## RULES FOR THE ASKING OF QUESTIONS IN THE INDIAN LEGISLATIVE COUNCIL.

The following rules were made by the Governor General in Council with the sanction of the Secretary of State in Council under <sup>1</sup> section 5 of the Indian Councils Act, 1909 (9 Edw. 7, c. 4), on the 15th November, 1909.<sup>2</sup>

Government of India's Despatch, Home Department, Public No. 21, dated 1st October, 1908, paragraph 60, and Lord Morley's despatch, Confidential, Public No. 193, dated 27th November, 1908, paragraph 30 and Home Department Resolution, Public No. 4213, dated 15th November, 1909, Gazette of India, 1909, Part I, page 1609, paragraph 20, may be read.

### 1. In these rules—

#### (1) "President" means—

- (a) the Governor General, or
- (b) the President appointed under section 6 of the Indian Councils Act, 1861,<sup>3</sup> or
- (c) the *Vice-President* appointed by the Governor General under section 4 of the Indian Councils Act, 1909.<sup>3</sup>

As to the "President" see the note under r. 1 of the Financial Statement Rules, *ante*.

As regards the *Vice-President* and the Senior Ordinary Member of Council see ss. 38, 42 and 64 (3) of the Government of India Act, 1915, *ante*, and the notes thereunder.

(2) "Member in charge" means the Member of the Council of the Governor General to whom is allotted the business of the Department of the Government of India to which the subject of the question belongs, and includes any Member to whom such Member in charge may delegate any function assigned to him under these rules ; and

(3) "Secretary" means the Secretary to the Government of India in the Legislative Department, and includes the Deputy Secretary and every person for the time being exercising the functions of the Secretary.

2. Any question may be asked by any Member subject to the following conditions and restrictions.

<sup>1</sup> Printed in Appendix I, *post*. See now s. 67 (3) of the Government of India Act, 1915, *ante*.

<sup>2</sup> See Notification No. 25, dated 15th November, 1909, in *Gazette of India* Extraordinary, dated 15th November, 1909, p. 444.

<sup>3</sup> Printed in Appendix I, *post*.



3. No question shall be permitted in regard to any of the following subjects, namely :—

- (a) any matter affecting the relations of His Majesty's Government or of the Governor General in Council with any Foreign State or with any Native State in India ; or
- (b) any matter under adjudication by a Court of Law having jurisdiction in any part of His Majesty's Dominions.

The Government of a British Colony is not a Foreign State. *See notes to Rule 3 of the Rules for the discussion of matters of General Public Interest, ante. See also last para. of notes under rule 7, below.*

4. No question shall be asked unless it complies with the following conditions, namely :—

- (a) it shall be so framed as to be merely a request for information,
- (b) it shall not be of excessive length,
- (c) it shall not contain arguments, inferences, ironical expressions or defamatory statements, nor shall it refer to the conduct or character of persons, except in their official or public capacity, and
- (d) it shall not ask for an expression of an opinion or the solution of a hypothetical proposition.

The intention of rule 4 (a) is that the question should be both in form and substance a genuine request for information. *See last para. of notes under rule 7, below.*

It has been doubted whether a question setting out an extract containing defamatory or other objectionable matter from some newspaper or other source can on that ground be said to be in contravention of rule 4 (c), and in one case a question containing a quotation grossly offensive to one community was disallowed under rule 8. *See B, Proceedings, February, 1911, Nos. 219—223.*

5. In matters which are or have been the subject of controversy between the Governor General in Council and the Secretary of State or a Local Government, no question shall be asked except as to matters of fact, and the answer shall be confined to a statement of facts.

*See last para. of notes under rule 7, below.*

6. A Member who wishes to ask a question shall give notice in writing to the Secretary at least ten clear days before the meeting of the Council at which he desires to put the question, and shall, together with the notice, submit a copy of the question which he wishes to ask :

Provided that the President may allow a question to be put with shorter notice than ten days, and may in any case require longer notice or may extend the time for answering a question.

This rule should be read with rule 18, *below*. It is not construed as entitling a Member to have his question put down for any particular meeting.

An adjourned meeting is a separate meeting within the meaning of this rule. See note under rule 5 of *the Rules for the Discussion of Matters of General Public Interest*, ante.

7. (1) The Secretary shall submit every question of which notice has been given to him in accordance with rule 6 to the President, who may either allow it or, when any question is not framed in accordance with rules 4 and 5, cause it to be returned to the Member concerned for the purpose<sup>e</sup> of amendment.

(2) If the Member does not, within such time as the President may fix in this behalf, re-submit the question duly amended, the question shall be deemed to have been withdrawn.

Every question of which notice is received by the Secretary, whether in due time or not, is submitted to the President, who has power under the proviso to rule 6 to allow a question to be asked although the notice is shorter than what is required by the rule.

Every question of which notice is received, is first considered in the Legislative Department to see whether it is permissible under the rules and is then sent to the Department to which the subject of the question belongs. That Department returns the file with its remarks on the question, and if it does not recommend the disallowance of the question, it also places in the file a copy of the reply which it proposes to give. *In the meantime* if the question appears to be defective in point of form, the Secretary, Legislative Department, suggests necessary amendments to the proposer of the question. The file is then submitted by the Secretary to His Excellency the President for his orders. In the case of questions belonging to the Foreign Department, that Department may submit the file to His Excellency the Viceroy where it considers that His Excellency's wishes have to be obtained as Member in charge of that Department. See B, Progs., March, 1912, Nos. 35—36.

The alternatives mentioned in this rule, namely, allowing or returning for amendment, are clearly not intended to be exhaustive. The obvious intention of rules 3, 4 and 5 is that there is power to disallow a question which offends against any of those rules. See Misc. File Register No. 677 of 1911 for a case of a question disallowed under rule 4; see also note under rule 6 of the *Rules for the Discussion of Matters of General Public Interest*, ante.

8. The President may disallow any question, or any part of a question, without giving any reason therefor other than that in his opinion it cannot be answered consistently with the public interests, or that it should be put in the Legislative Council of a Local Government.

9. No discussion in Council shall be permitted in respect of any order of the President under rule 7 or rule 8.

10. Questions which have been allowed shall be entered in the list of business for the day, and shall be put in the order in which they stand in the list before any other business is entered upon at the meeting.

The communication to the Press of questions which have not received the President's sanction is regarded as a serious measure and a breach of privilege. *See* Leg. Dep. Pro., March, 1911, Nos. 190—191.

11. Questions shall be put and answers given in such manner as the President may in his discretion determine.

12. Any Member who has asked a question may put a supplementary question for the purpose of further elucidating any matter of fact regarding which a request for information has been made in his original question.

13. The Member in charge may decline to answer a supplementary question without notice, in which case the supplementary question may be put in the form of a fresh question at a subsequent meeting of the Council.

14. These rules, except rules 6 and 7, apply also to supplementary questions :

Provided that the President may disallow any supplementary question without giving any reason therefor.

15. The President may rule that an answer to a question in the list of business for the day shall be given on the ground of public interest even though the question may have been withdrawn.

16. No discussion shall be permitted in respect of any question or of any answer given to a question.

17. All questions asked and the answers given shall be entered in the proceedings of the Council :

Provided that no question which has been disallowed by the President shall be so entered.

For form of Proceedings, *see* Appendix XII, No. 19, *post*.

18. The President may assign such time as, with due regard to the public interests, he may consider reasonable for the putting and answering of questions.

*See* note under rule 6, *above*.

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## INSTRUCTIONS TO LOCAL GOVERNMENTS REGARDING LEGISLATION IN LOCAL COUNCILS:

These revised *Instructions* were issued on the 5th June, 1918, in supersession of those issued on the 27th May, 1913. The *Instructions* issued in 1898 were consolidated (with certain amendments) by those issued in 1913, and the latter have now, in their turn, been revised and re-issued.

For correspondence with the Secretary of State, see Appendix VIII, *post*, and for the circular letter with which the *Instructions* were sent to Local Governments, see Appendix IX, *post*. For their history and the reasons leading to their issue, see the *Supplementary Note* below and the Government of India's Despatch No 22 of 1898 in Appendix VIII, *post*. See also Legislative Department's letter addressed to the Secretary of State, dated the 31st May, 1918, in Appendix VIII.

### GOVERNMENT BILLS.

1. (1) Every communication made by a Local Government to the Government of India asking for leave to introduce a Bill, or regarding a Bill which has been introduced in the Local Council, or submitting a Law for the assent of the Governor General, under section 81 of the Government of India Act, 1915, shall be addressed to the Secretary to the Government of India in the Legislative Department of Government of India to be addressed.

5 & 6 Geo. 5,  
c. 61.

(2) Nothing in this rule shall be construed to apply to any correspondence or communication regarding a proposal for legislation in a Local Council, unless and until the stage is reached at which leave to introduce a Bill is asked for. All correspondence before that stage shall be conducted with the Executive Department of the Government of India to which the subject belongs.

(3) Where the legislation proposed involves substantial questions of principle, leave to introduce a Bill should not be asked for under this rule until such questions have been settled in communication with the Executive Department of the Government of India to which the subject belongs.

(4) Every letter addressed to the Legislative Department of the Government of India by a Local Government under this rule should, if it asks for leave to introduce a Bill, state explicitly—

(i) whether or not the Executive Department of the Government of India concerned has been addressed as to the policy of the proposed measure;

(ii) if it has, what was the result; and,

(iii) if it has not, why that has not been done.

(5) Bills which propose textual amendments, either numerous or complicated, or both, in prior Acts should, when submitted to the Government of India, be accompanied by a reprint of the Act affected, with the proposed amendments printed *in loco* in distinctive type, and with notes referring to the clauses of the Bill in which the several amendments are respectively proposed.

Paragraph 2 of the Resolution of the Government of India in the Finance Department, No. 1175, dated the 29th June, 1877, requires that no provision constituting a fund shall be made in any Bill to be introduced in a Local Council until the expediency of the measure has been specially considered in that Department. These orders are still in force, and are not affected by this rule. See manuscript notes to Legislative Department's A. Pros., October, 1898, Nos. 1—6.

Draft Bills to be ordinarily reported to Secretary of State and Government of India before introduction.

2. (1) Save as otherwise provided in these rules, every draft Bill, with all necessary papers connected therewith, shall, before introduction, be transmitted with a despatch to the Secretary of State.

(2) In the case of a Madras, Bombay or Bengal draft Bill, the despatch shall be addressed by the Local Government to the Secretary of State direct, a copy thereof, and of its enclosures, being forwarded at the same time for information, with a covering letter to the Legislative Department of the Government of India.

(3) In the case of a draft Bill other than a Madras, Bombay or Bengal draft, the Local Government shall forward the draft, with all necessary papers connected therewith, to the Legislative Department of the Government of India, and the requisite despatch shall forthwith be addressed by the Government of India to the Secretary of State, a copy thereof being forwarded for information to the Local Government.

It is not intended that the issue of the despatch here provided for should be delayed by the Legislative Department to admit of the examination of the draft Bill by the Government of India, but that such examination should be proceeded with after the issue of the despatch and during the two months' interval provided for by r. 4 below.

Fifty spare copies of the draft Bill and connected papers should accompany the communication addressed to the Legislative Department under sub-rule (2) or (3) : see para. 8 of the circular letter to Local Governments in Appendix IX, *post*.

Previous sanction when to be applied for in certain cases.

3. (1) Where a draft Bill contains penal clauses, the previous sanction of the Government of India thereto shall be expressly applied for when the draft is reported to the Legislative Department of the Government of India under sub-rule (2) or sub-rule (3) of rule 2, as the case may be.

(2) Where a draft Bill contains provisions which, in the opinion of the Local Government, require the previous sanction of the Governor General under sub-section (2) or (3)

5 & 6 Geo. 5, c. 61. of section 79 of the Government of India Act, 1915, such previous sanction shall likewise be expressly applied for when the draft is forwarded to the Legislative Department of the Government of India as aforesaid.

(3) When submitting Bills to the Government of India, attention should be drawn to all clauses which appear to require the sanction referred to in sub-rule (2) of this rule.

(4) Where a Local Legislature repeals or amends, as to its own Province, any Law or Regulation made by any other legislative authority in India, the desired modifying provisions should be enacted not as textual amendments of such Law or Regulation, but as a separate Act of that Local Legislature, to take effect, with the previous sanction of the Governor General, under section 79 (2) of the Government of India Act, 1915, notwithstanding anything contained in the said Law or Regulation.

In connection with sub-rule (1), see the note to s. 79 (3) (d) of the Government of India Act, 1915, *ante*, and Appendix VI, *post*; see also r. 29 of the *Rules of Business*, *ante*.

4. When a draft Bill has been reported to the Secretary of State and the Government of India under rule 2, it shall not be introduced in the Local Council until the receipt of a communication from the Legislative Department of the Government of India, intimating that the penal or other clauses (if any) requiring previous sanction are sanctioned, and that the Secretary of State and the Government of India have no present intention of interfering with the measure :

Procedure after report of draft Bill to Secretary of State and Government of India.

Provided that, if no such communication and no orders to the contrary are received within two months\* from the date of the despatch transmitting the draft Bill to the Secretary of State, and if such previous sanction (if any) as is referred to in rule 3, sub-rule (2), has been obtained, the Bill may be introduced and proceeded with on the assumption that the penal clauses (if any) are approved, and that there is no present intention, on the part of either the Secretary of State or the Government of India, of objecting to the measure :

Provided, also, that the omission of either the Secretary of State or the Government of India to communicate any remarks regarding a measure dealt with under this and the foregoing rules shall not be taken to imply final approval of the measure, and shall not be regarded as in any way affecting the right of the Governor General to withhold his

\* The period of two months for the period of two months.

assent therefrom under section 81, or that of His Majesty to signify his disallowance thereof under section 82 of the Government of India Act, 1915.

5 & 6 Geo. 5,  
c. 61.

Although the Governments of Madras, Bombay and Bengal address the Secretary of State direct, the replies of the Secretary of State are "to obviate all chance of concurrent or conflicting action" by arrangement addressed to the Government of India for communication to the Local Government concerned. See s. 3 of the despatch from the Secretary of State (Lord Salisbury), No. 33 (Legislative), dated the 15th October, 1874.

The previous sanction referred to in r. 3 (2) is required by Act of Parliament and cannot, therefore, be dispensed with. With the penal clauses it is different.—See the note to s. 79 (3) (d) of the Government of India Act, 1915, *ante*, and Appendix VI, *post*.

The examination, by the Legislative Department of the Government of India, of the Bills of a Local Council does not ordinarily extend to matters of form and details of drafting. For these the Local Government concerned is held responsible.—See the Explanation to r. 30 of the *Rules of Business, ante*.

Exceptions  
from fore-  
going rules.

5. (1) The following shall be excepted from the operation of rules 2, 3 and 4, namely :—

- (a) draft Consolidation Bills, pure and simple, consolidating Acts of the Local Council concerned ;
- (b) cases in which the approval of the Secretary of State and the Government of India to the principle of the legislation proposed has already been obtained, and a further reference is, in the opinion of the Local Government, unnecessary ;
- (c) cases in which the legislation proposed is, in the opinion of the Local Government, of a purely formal or unimportant character ; and
- (d) cases in which the legislation proposed cannot, in the opinion of the Local Government, be, without serious evil, delayed in order to admit of a prior report to the Secretary of State and the Government of India.

(2) In every such case as aforesaid, the draft Bill may be introduced forthwith :

Provided that, where such a draft Bill contains penal clauses, the Legislative Department of the Government of India shall be applied to for sanction thereto, and the Bill shall not be introduced until the receipt of such sanction or the expiration of one month from the date of the application therefor without the receipt of any reply from the Legislative Department of the Government of India :

Provided, also, that, where such a draft Bill contains provisions which, under sub-section (2) or (3) of section 79 of

5 and 6 Geo.  
5, c. 61.

the Government of India Act, 1915, require the previous sanction of the Governor General, such previous sanction shall be applied for to, and obtained from, the Legislative Department of the Government of India before the introduction of the Bill.

As to the intention of sub-rule (1), *see* para. 2 of the circular letter, dated the 5th June, 1918, in Appendix IX, *post*.

Repealing and Amending Bills (Statute Law Revision) may properly be dealt with as falling under clause (c) of sub-rule (1).

As to penal clauses, *see* note to s. 79(3) (d) of the Government of India Act, 1915, *ante*, and Appendix VI, *post*, cf. rule 3 (1), *ante*.

6. (1) The instructions contained in sub-rules (2) and (3) of rule 2 shall, with the necessary modifications, apply to every draft Bill dealt with under rule 5 which has been introduced without a prior report to the Secretary of State and the Government of India. Procedure in exceptional cases.

(2) In addressing the Legislative Department of the Government of India under sub-rule (1) of this rule, the Local Government shall, in every case, without delay, explain its reasons for dealing with the Bill under clause (a), (b), (c) or (d), as the case may be, of rule 5.

(3) Where a draft Bill is dealt with under rule 5, no reply to the communication addressed under this rule to the Secretary of State or the Government of India need be awaited before the Bill is further proceeded with.

*See* the first note to rule 4, *ante*.

In connection with sub-rule (2), *see* rule 31 of the *Rules of Business*, *ante*.

7. Where a despatch regarding a Madras, Bombay or Bengal draft Bill is addressed by the Local Government to the Secretary of State in continuation of a despatch which has been transmitted under rule 2, sub-rule (2), or rule 6, the Local Government shall forthwith forward a copy of the despatch and its enclosures for information to the Legislative Department of the Government of India. Further correspondence regarding draft Bills.

The object of this rule is to keep the Government of India informed with a view to obviate inconvenience and misunderstanding.

8. (1) Where, before introduction, any material alteration is made in a Bill which has been reported or forwarded to the Government of India under rule 2, or where, after a Bill has been introduced, whether as an exceptional measure dealt with under rule 5 or otherwise, an amendment is made therein, such alteration or amendment shall forthwith be reported to the Legislative Department of the Government of India. Alterations or amendments in Bills to be reported.

(2) Where, after a Bill has been introduced in a Local Council, whether as an exceptional measure dealt with under



rule 5 or otherwise, an amendment is proposed in it which, owing to its being outside the principle of the Bill as introduced, or for any other reason, the Local Government considers that it cannot accept without a reference to the Government of India, the requisite steps should be taken to delay the progress of the Bill through Council, pending the result of a reference to the Legislative Department of the Government of India. Where such reference has been made, the amendment referred should not be accepted until the receipt of a favourable reply, or until the expiration of one month from the date of the reference without the receipt of any such reply.

(3) Where a reference is made under sub-rule (2) of this rule, and the Government of India consider that the amendment so referred is one which ought not to be accepted without a further reference to the Secretary of State, an intimation to that effect will be sent to the Local Government by the Legislative Department of the Government of India. The Secretary of State shall then be addressed by the Government of India, and the amendment shall not be accepted until intimation of the arrival of a favourable reply from the Secretary of State is received by the Local Government from the Legislative Department of the Government of India, or until the expiration of two months\* from the date of the reference made by the Local Government without the receipt of any further communication on the subject from the Legislative Department of the Government of India.

(4) Where, in the course of a Bill through Council, an amendment is proposed which requires any such previous sanction as is referred to in rule 3, such previous sanction shall be applied for to, and obtained from, the Legislative Department of the Government of India before the Bill so amended is passed.

The intention of sub-rule (1) is to ensure that the Government of India are kept in touch with *all* stages of legislation in Local Councils.

Marginal  
references to  
clauses.

9. In every draft Bill, a reference shall be added on the margin of each clause to show whether it is based on any, and, if so, on what, provision of the existing law. Such marginal references may be retained during the progress of the Bill through the Local Council, but shall be removed from the copy submitted, in the event of the passing of the

\* In accordance with the directions of the Secretary of State contained in his telegram dated the 10th September 1917.

Page 218 — Delete the footnote on the page. / 24

Legislative Department Pros. November, 1917, Nos. 18—21.

measure, for the assent of the Governor or Lieutenant-Governor, as the case may be, and also from that submitted to the Legislative Department of the Government of India for the assent of the Governor-General.

### PRIVATE BILLS.

10. (1) When a non-official Member of a Local Council gives notice of his intention to introduce a Bill in that Council, the Local Government shall, without any discussion of its merits, forthwith forward a copy of the draft Bill, and of the Statement of Objects and Reasons, together with a copy of the notice, to the Legislative Department of the Government of India. In the case of a draft Bill so forwarded by the Government of Madras, Bombay or Bengal, the Local Government shall, at the same time, transmit a copy of the draft Bill, and of the Statement of Objects and Reasons, to the Secretary of State direct.

Non-official  
Members'  
Bills.

(2) In the case of a draft Bill forwarded by any Local Government other than the Governments of Madras, Bombay or Bengal, the Legislative Department of the Government of India shall forthwith transmit a copy of the draft Bill, and of the Statement of Objects and Reasons, with a covering letter, to the Secretary of State.

(3) When a non-official Member's Bill has been forwarded under sub-rule (1) the Local Government shall, without delay, address the Legislative Department of the Government of India as to the policy of the Bill and the attitude which the Local Government proposes to adopt towards it. Where the Bill contains provisions which, in the opinion of the Local Government, require the previous sanction of the Governor General under section 79 (3) of the Government of India Act, 1915, the Local Government shall, at the same time, express its opinion whether that sanction should, or should not, be granted, and should take such steps as may be necessary to prevent the Bill being proceeded with until receipt of an intimation from the Legislative Department that such sanction has been given.

5 and 6 Geo.  
5, c. 61.

(4) Any further correspondence which may be necessary in connection with the Bill should be addressed to the Legislative Department of the Government of India.

This rule is now and deals only with Bills initiated by non-official Members. As to its object and the reasons which led to its introduction, *see* the Government of India's letter No. 84, dated the 31st May, 1918, in Appendix VIII, *post*, and para. 6 of the Government of India's circular letter, dated the 5th June, 1918, in Appendix IX, *post*.

*Supplementary note.*

The orders which were superseded in 1898 required that correspondence connected with legislation in Local Councils should be conducted in different Departments in accordance with the nature of the subject matter and the particular stage reached. The Executive Department concerned had to be addressed by the Local Government as to the policy of a measure, and, if the previous sanction of the Governor General was necessary, that Department had to be asked to obtain it. But, as more than one Executive Department might be concerned, Local Governments often found it difficult to decide which to address, and frequent mistakes were, in fact, made. Moreover, the necessity for obtaining previous sanction, not being always obvious, was apt to be overlooked both by Local Governments and by Executive Departments. Thus, if any penal provisions were contemplated, the Home Department had, under the express orders (subsequently cancelled—see note to r. 29 of the *Rules of Business, ante*), of the Secretary of State, to be consulted, and, therefore, that Department also had to be separately addressed, unless, of course, it happened to be the Executive Department concerned. Again, the fact that a clause is penal is not necessarily apparent on the face of it; for such an effect may arise from the use of words referring to, or extending the operation of, some other enactment. Hence the necessity for a reference to the Home Department was sometimes lost sight of through want of familiarity with the Indian Statute-book. When a Bill was introduced, the Local Government had to send it to the Legislative Department, and by the Legislative Department, it had to be forwarded to the Secretary of State. And, when a Bill was passed, the Local Government was required once more to address the Executive Department concerned, whereupon that Department first obtained the Governor General's administrative sanction and then transferred the case to the Legislative Department, by which the Governor General's formal assent was secured and communicated to the Local Government and the Secretary of State. The intricacy of this procedure was the cause of frequent delay, misunderstanding, and complaint, and the matter was eventually brought to a head by a strong representation from one Local Government urging that "the principle be clearly enunciated that the Government of India in one Department is the Government of India in all Departments, and that Local Governments should not be required to address different Departments separately on the subject of the same Bill". In the case of local legislation more than one Department must, in every instance, be concerned, and it was decided to

make the Legislative Department solely responsible for the conduct of all business of the kind, not only because such business would seem *primâ facie* properly to fall within its province, but also because, whatever Executive Department(s) may be concerned, the Legislative Department at all events is concerned in every case and must be referred to at some stage. The Legislative Department does not—*see* rule 1 of the *Instructions, ante*—come in until the time for legislation is ripe ; but from that time onwards it has sole charge of the proceedings. Sometimes, no doubt, it has to act as a mere channel of communication, and to issue orders which it is • incompetent to suggest and which have to be dictated to it by an Executive Department, and this, no doubt, may appear anomalous. But the change has, it is thought, been an improvement. It has reduced delays by admitting of simultaneous inter-departmental references where necessary ; for the Legislative Department can tell, almost at a glance, what Executive Departments are concerned at the various stages, and, where more than one are interested, it can refer to each at the same time. Further, it has simplified correspondence with the Secretary of State, who knows now to look to the Legislative Department only for everything connected with local legislation which has reached, or is about to reach, the Council stage. And it has obviated friction with Local Governments, with whom the only difficulty now felt is in connection with a tendency to come up to the Legislative Department with a regular Bill before the administrative questions involved have been fully considered. The provisions of rule 1 (3) and (4) of the *Instructions, ante*, were intended to check this tendency. On the other hand, unnecessary references back to Local Governments may be avoided by attention to the orders contained in para. 1 of the Home Department's office memorandum dated the 2<sup>nd</sup> November, 1901, reproduced in the notes to r. 28 of the *Rules of Business, ante*.



## APPENDIX I.<sup>1</sup>

THE REPEALED INDIAN COUNCILS ACTS, 1861, 1869, 1871, 1874, 1892 AND 1909, AND THE REPEALED GOVERNMENT OF INDIA ACTS, 1865, 1869, 1870 AND 1912.<sup>1</sup>

### THE INDIAN COUNCILS ACT, 1861.<sup>2</sup>

[24 & 25 VICT., c. 67.]

*An Act to make better provision for the constitution of the Council of the Governor General of India, and for the local government of the several Presidencies and Provinces of India, and for the temporary government of India in the event of a vacancy in the Office of Governor General.*

[1st AUGUST 1861.]

[*Preamble rep. 55 & 56 Vict., c. 19.*]

1. This Act may be cited for all purposes as “The **Short title.**  
Indian Councils Act, 1861.”

2. \* \* \* \* \*

All other enactments whatsoever now in force with relation to the Council of the Governor General of India, or to the Councils of the Governors of the respective Presidencies of Fort St. George and Bombay, shall, save so far as the same are altered by or are repugnant to this Act, continue in force, and be applicable to the Council of the Governor General of India and the Councils of the respective Presidencies under this Act.

Enactments continued in force.

3. There shall be five ordinary members of the said Council of the Governor General, three of whom shall from time to time be appointed

Composition of the Council of the Governor

<sup>1</sup> These Statutes have been repealed and re-enacted by the Government of India Act, 1915, *ante*. They are printed in this Appendix for purposes of ready reference, *see* Prefatory Note, *ante*.

<sup>2</sup> For Despatch from Secretary of State regarding this Statute, *see* Appendix II, *post*.

<sup>3</sup> The earlier part of s. 2 repealed certain enactments, and was itself repealed by 55 & 56 Vict., c. 19.

<sup>4</sup> The words “by the Secretary of State for India in Council, with the concurrence of a majority of members present at a meeting” were repealed by 41 & 42 Vict., c. 79 [S. L. R.].

## THE INDIAN COUNCILS ACT, 1861.

General of India.                      \*                      \*                      \* <sup>1</sup> from among such persons as shall have been, at the time of such appointment, in the service in India of the Crown, or of the Company and the Crown for at least ten years, and if the person so appointed shall be in the military service of the Crown, he shall not, during his continuance in office as a member of Council, hold any military command, or be employed in actual military duties, and the remaining two, one of whom shall be a barrister or a member of the Faculty of Advocates in Scotland of not less than five years' standing, shall be appointed from time to time by Her Majesty by warrant under Her Royal Sign Manual; and it shall be lawful for the Secretary of State in Council to appoint the Commander-in-Chief of Her Majesty's Forces in India to be an extraordinary member of the said Council, and such extraordinary member of Council shall have rank and precedence at the Council Board next after the Governor General.

Present members of Council to continue.

4. The present ordinary members of the Council of the Governor General of India shall continue to be ordinary members under and for the purposes of this Act; and it shall be lawful for Her Majesty to appoint by warrant as aforesaid an ordinary member of Council to complete the number of five hereby established; and there shall be paid to such ordinary member and to all other ordinary members who may be hereafter appointed, such amount of salary as may, from time to time, be fixed for members of the Council of the Governor General by the Secretary of State in Council, with the concurrence of a majority of members of Council present at a meeting, and all enactments of any Act of Parliament or law of India respecting the Council of the Governor General of India and the members thereof shall be held to apply to the said Council as constituted by this Act, except so far as they are repealed by or are repugnant to any provisions of this Act.

Appointment of fifth member and salaries of members, &c.

Provisional appointments of members of Council.

5. It shall be lawful for the Secretary of State in Council, with the concurrence of a majority of members present at a meeting, and for Her Majesty, by warrant as aforesaid, respectively, to appoint any person provisionally to succeed to the office of ordinary member of the Council of the Governor General, when the same shall become vacant by the death or resignation of the person holding the said office, or on his departure from India with intent to return to Europe, or on any event and contingency expressed in any such provisional appointment and such appointment again to revoke; but no person so appointed to succeed provisionally to

<sup>1</sup> See footnote <sup>4</sup> ante.

## THE INDIAN COUNCILS ACT, 1861.

such office shall be entitled to any authority, salary or emolument appertaining thereto until he shall be in the actual possession of such office.

6. Whenever the said Governor General in Council shall declare that it is expedient that the said Governor General should visit any part of India unaccompanied by his Council, it shall be lawful for the said Governor General in Council, previously to the departure of the said Governor General, to nominate some member of the said Council to be president of the said Council, in whom, during the time of such visit, the powers of the said Governor General in assemblies of the said Council shall be reposed, except that of assenting to, or withholding his assent from, or reserving for the signification of Her Majesty's pleasure, any law or regulation as hereinafter provided; and it shall be lawful in every such case for the said Governor General in Council, by an order for that purpose to be made, to authorize the Governor General alone to exercise all or any of the powers which might be exercised by the said Governor General in Council in every case in which the said Governor General may think it expedient to exercise the same, except the power of making laws or regulations.

Provisions during absence of Governor General in other parts of India.

7. Whenever the Governor General, or such president so nominated as aforesaid, shall be obliged to absent himself from any meeting of Council (other than meetings for the purpose of making laws and regulations, as hereinafter provided) owing to indisposition or any other cause whatsoever, and shall signify his intended absence to the Council, then and in every such case the senior member for the time being who shall be present at such meeting shall preside thereat, in such manner, and with such full powers and authorities during the time of such meeting, as such Governor General or president would have had in case he had been present at such meeting: Provided always, that no Act of Council made at any such meeting shall be valid to any effect whatsoever unless the same shall be signed by such Governor General or president, respectively, if such Governor General or president shall at the time be resident at the place at which such meeting shall be assembled, and shall not be prevented by such indisposition from signing the same: Provided always, that in case such Governor General or president, not being so prevented as aforesaid shall decline or refuse to sign such Act of Council, he and the several members of Council who shall have signed the same, shall mutually exchange with and

Provisions in case of absence of Governor General, etc., from meeting of Council.



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communicate in writing to each other the grounds and reasons of their respective opinions, in like manner and subject to such regulations and ultimate responsibility as are by the East India Company Act, 1793,<sup>1</sup> sections forty-seven, forty-eight, forty-nine, fifty and fifty-one, provided and described in cases where such Governor General shall, when present, dissent from any measure proposed or agitated in the Council.

33 Geo. 3,  
c. 52, ss. 47  
to 51.

Power of  
Governor  
General  
to make  
rules for  
conduct of  
business,

8. It shall be lawful for the Governor General, from time to time, to make rules and orders for the more convenient transaction of business in the said Council; and any order made or act done in accordance with such rules and order (except as hereinafter provided respecting laws and regulations) shall be deemed to be the order or act of the Governor General in Council.

Council  
where to  
assemble.

9. The said Council shall, from time to time, assemble at such place or places as shall be appointed by the Governor General in Council within the territories of India; and as often as the said Council shall assemble within either of the Presidencies of Fort St. George or Bombay, the Governor of such Presidency shall act as an extraordinary member of Council; and as often as the said Council shall assemble within any other division, province or territory having a Lieutenant-Governor, such Lieutenant-Governor shall act as an additional councillor at meetings of the Council, for the purpose of making laws and regulations only, in manner hereinafter provided.

Additional  
members  
to be sum-  
moned for  
the purpose  
of making  
laws and  
regulations,

10. For the better exercise of the power of making laws and regulations vested in the Governor General in Council, the Governor General shall nominate, in addition to the ordinary and extraordinary members above mentioned, and to such Lieutenant-Governor in the case aforesaid, such persons \* \* \* \*<sup>2</sup> as to him may seem expedient, to be members of Council for the purpose of making laws and regulations only, and such persons shall not be entitled to sit or vote at any meeting of Council, except at meetings held for such purpose: Provided that not less than one-half of the persons so nominated shall be non-official persons, that is, persons who, at the date of such nomination, shall not be in the civil or military service of the Crown in India; and that the seat in Council of any

<sup>1</sup> The whole of the East India Company Act, 1793, has been repealed by the Government of India Act, 1915, s. 180, Schedule IV, *ante*.

<sup>2</sup> The words "not less than six nor more than twelve in number" were repealed by the Indian Councils Act, 1909, s. 8, *post*.

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non-official member accepting office under the Crown in India shall be vacated on such acceptance.

11. Every additional member of Council so nominated shall be summoned to all meetings held for the purpose of making laws and regulations. <sup>1\*</sup> <sup>\*</sup> <sup>Summning of additional members to meetings of Council.</sup>

12. It shall be lawful for any such additional member of Council to resign his office to the Governor General, and on acceptance of such resignation by the Governor General such office shall become vacant. <sup>Resignation of additional members.</sup>

13. <sup>2</sup>[*Rep. by Indian Councils Act, 1892 (55 & 56 Vict., c. 14), s. 4.*]

14. No law or regulation made by the Governor General in Council, in accordance with the provisions of this Act, shall be deemed invalid by reason only that the proportion of non-official additional members hereby provided was not complete at the date of its introduction to the Council or its enactment. <sup>No law to be invalid by reason of number of non-official members being incomplete.</sup>

15. In the absence of the Governor General and of the president, nominated as aforesaid, the senior ordinary member of the Council present shall preside at meetings of the Council for making laws and regulations; <sup>3</sup> \* \* \* and in every case of difference of opinion at meetings of the said Council for making laws and regulations where there shall be an equality of voices, the Governor General, or in his absence the president, and in the absence of the Governor General and president such senior ordinary member of Council there presiding, shall have two votes or the casting vote. <sup>Senior ordinary member of Council to preside at meetings for making laws and regulations in absence of Governor General, etc.</sup>

16. <sup>4</sup>[*Rep. by the Statute Law Revision Act, 1892 (55 & 56 Vict., c. 19).*]

17. It shall be lawful for the Governor General in Council from time to time to appoint all <sup>5\*</sup> times and places of meeting of the Council for the purpose of making <sup>Power to appoint and adjourn meetings for making laws and regulations.</sup>

<sup>1</sup> The words "for the term of two years from the date of such nomination" were repealed by the Indian Councils Act, 1909, s. 8, *post*.

<sup>2</sup> The Indian Councils Act, 1892, is printed *post*.

<sup>3</sup> The words "and the power of making laws and regulations vested in the Governor General in Council shall be exercised only at meetings of the said Council at which such Governor General or president or some ordinary member of Council, and six or more members of the said Council (including under the term members of the Council such additional members as aforesaid), shall be present" were repealed by the Indian Councils Act, 1909, s. 8, *post*.

<sup>4</sup> This section provided for the first meeting for making laws and regulations and the exercise of legislative powers until that meeting. It was repealed as being spent.

<sup>5</sup> The word "other" was repealed by 55 & 56 Vict., c. 19.

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laws and regulations under the provisions of this Act, and to adjourn or from time to time to authorize such president, or senior ordinary member of Council in his absence, to adjourn, any meeting for the purpose of making laws and regulations from time to time and from place to place.

Rules for conduct of business at such meetings.

18. It shall be lawful for the Governor General in Council to make<sup>1</sup> rules for the conduct of business at meetings of the Council for the purpose of making laws and regulations under the provisions of this Act, prior to the first of such meetings, but such rules may be subsequently amended at meetings for the purpose of making laws or regulations, subject to the assent of the Governor General, and such rules shall prescribe the mode of promulgation and authentication of such laws and regulations: Provided always that it shall be lawful for the Secretary of State in Council to disallow any such rule and to render it of no effect.

Business to be transacted at such meetings.

19. No business shall be transacted at any meeting for the purpose of making laws and regulations, except as last hereinbefore provided other than the consideration and enactment of measures introduced into the Council for the purpose of such enactment, and it shall not be lawful for any member or additional member to make, or for the Council to entertain, any motion, unless such motion be for leave to introduce some measure as aforesaid into Council, or have reference to some measure actually introduced thereinto: Provided always that it shall not be lawful for any member or additional member to introduce, without the previous sanction of the Governor General, any measure affecting—

1st the public debt or public revenues of India, or by which any charge would be imposed on such revenues:

2nd the religion or religious rites and usages of any class of Her Majesty's subjects in India:

3rd the discipline or maintenance of any part of Her Majesty's military or naval forces:

4th the relations of the Government with foreign Princes or States.

Assent of Governor General to laws and regulations made at such meetings.

20. When any law or regulation has been made by Council at a meeting for the purpose of making laws and regulations as aforesaid, it shall be lawful for the Governor General, whether he shall or shall not have been present in Council at

<sup>1</sup> For the rules made under s. 18 and amended, see the *Rules for the Conduct of Legislative Business, ante*. Such rules would now be made under s. 70 of the Government of India Act, 1915, *ante*.

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the making thereof, to declare that he assents to the same, or that he withholds his assent from the same, or that he reserves the same for the signification of the pleasure of Her Majesty thereon; and no such law or regulation shall have validity until the Governor General shall have declared his assent to the same, or until (in the case of a law or regulation so reserved as aforesaid) Her Majesty shall have signified her assent to the same, to the Governor General, through the Secretary of State for India in Council, and such assent shall have been duly proclaimed by the said Governor General.

21. Whenever any such law or regulation has been assented to by the Governor General, he shall transmit to the Secretary of State for India an authentic copy thereof, and it shall be lawful for Her Majesty to signify, through the Secretary of State for India in Council, Her disallowance of such laws; and such disallowance shall make void and annul such law from or after the day on which the Governor General shall make known, by proclamation or by signification, to his Council that he has received the notification of such disallowance by Her Majesty.

Power of the Crown to disallow laws and regulations made at such meetings.

22. The Governor General in Council shall have power at meetings for the purpose of making laws and regulations as aforesaid, and subject to the provisions herein contained, to make laws and regulations for repealing, amending or altering any laws or regulations whatever, now in force or hereafter to be in force in the Indian territories now <sup>1</sup>[or hereafter] under the dominion of Her Majesty and to make laws and regulations for all persons, whether British or Native, foreigners or others, and for all Courts of justice whatever, and for all places and things whatever, within the said territories, and for all servants of the Government of India within the dominions of Princes and States in alliance with Her Majesty, and the laws and regulations so to be made by the Governor General in Council shall control and supersede any laws and regulations in anywise repugnant thereto which shall have been made prior thereto by the Governors of the Presidencies of Fort St. George and Bombay, respectively, in Council or the Governor or Lieutenant-Governor in Council of any presidency or other territory for which a Council may be appointed, with power to make laws and regulations under and by virtue of this Act: Provided always, that the said Governor General in Council shall not have the power of making any laws and regulations which

Extent of the powers of the Governor General in Council to make laws and regulations at such meetings.

<sup>1</sup> These words in s 22 were inserted, with retrospective effect, by the Indian Councils Act, 1892, s. 3, *post*.

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shall repeal or in any way affect any of the provisions of this Act:

Or any of the provisions of the Government of India Act, 1833,<sup>1</sup> and of the Government of India Act, 1853,<sup>1</sup> and of the Government of India Act, 1854,<sup>1</sup> which after the passing of this Act, shall remain in force :

Or any provisions of the Government of India Act, 1858, or of the Government of India Act, 1859<sup>1</sup> :

Or of any Act enabling the Secretary of State in Council to raise money in the United Kingdom for the Government of India :

Or of the Acts for punishing mutiny and desertion in Her Majesty's army or in Her Majesty's Indian forces respectively ; but subject to the provisions contained in the Government of India Act, 1833, section seventy-three,<sup>2</sup> respecting the Indian Articles of War :

Or any provisions of any Act passed in this present session of Parliament, or hereafter to be passed, in anywise affecting Her Majesty's Indian territories, or the inhabitants thereof :

Or which may affect the authority of Parliament, or the constitution and rights of the East India Company, or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland, whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom, or the sovereignty or dominion of the Crown over any part of the said territories.

Governor  
General may  
make  
Ordinances  
having force  
of law in cases  
of urgent  
necessity.

23. Notwithstanding anything in this Act contained, it shall be lawful for the Governor General, in cases of emergency, to make and promulgate from time to time Ordinances for the peace and good government of the said territories or of any part thereof, subject however to the restrictions contained in the last preceding section ; and every such Ordinance shall have like force of law with a law or regulation made by the Governor General in Council as by this Act provided, for the space of not more than six months from its

<sup>1</sup> The Government of India Act, 1833 (except s. 112), the Government of India Acts, 1853, 1854, 1859, and the Government of India Act, 1858 (except s. 4) have been repealed by the Government of India Act, 1915, Sch. IV, *ante*.

<sup>2</sup> See the above footnote, and s. 65 (1) (d), Government of India Act, 1915, *ante*.

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promulgation, unless the disallowance of such Ordinance by Her Majesty shall be earlier signified to the Governor General by the Secretary of State for India in Council, or unless such Ordinance shall be controlled or superseded by some law or regulation made by the Governor General in Council at a meeting for the purpose of making laws and regulations as by this Act provided.

24. No law or regulation made by the Governor General in Council (subject to the power of disallowance by the Crown, as hereinbefore provided) shall be deemed invalid by reason only that it affects the prerogative of the Crown.

No law, etc., invalid by reason of it affecting any prerogative of the Crown.

25. Whereas doubts have been entertained whether the Governor General of India, or the Governor General of India in Council, had the power of making rules, laws and regulations for the territories known from time to time as "non-regulation provinces," except at meetings for making laws and regulations, in conformity with the provisions of the Government of India Act, 1833,<sup>1</sup> and of the Government of India Act, 1853, and whether the Governor, or Governor in Council, or Lieutenant-Governor of any Presidency or part of India, had such power in respect of any such territories. Be it enacted that no rule, law or regulation which prior to the passing of this Act shall have been made by the Governor General, or Governor General in Council, or by any other of the authorities aforesaid, for and in respect of any such non-regulation province, shall be deemed invalid only by reason of the same not having been made in conformity with the provisions of the said Acts, or of any other Act of Parliament respecting the constitution and powers of the Council of India, or of the Governor General, or respecting the powers of such Governors or Governors in Council, or Lieutenant-Governors as aforesaid.

Laws made for the non-regulation provinces declared valid.

3 & 4 Will. 4,  
c. 85.  
16 & 17 Vict.,  
c. 95.

26. It shall be lawful for the Governor General in Council, or Governor in Council of either of the Presidencies, as the case may be, to grant to an ordinary member of Council leave of absence, under medical certificate, for a period not exceeding six months; and such member, during his absence, shall retain his office, and shall, on his return and resumption of his duties, receive half his salary for the period of such absence, but if his absence shall exceed six months, his office shall be vacated.

Provision for leave of absence to an ordinary member of Council.

27. If any vacancy shall happen in the office of an ordinary member of the Council of the Governor General,

Power of making temporary appointments of members

<sup>1</sup> See first footnote on preceding page.

## THE INDIAN COUNCILS ACT, 1861.

of Council,  
etc.

or of the Council of either of the Presidencies, when no person provisionally appointed to succeed thereto shall be then present on the spot, then and on every such occasion, such vacancy shall be supplied by the appointment of the Governor General in Council, or the Governor in Council, as the case may be; and, until a successor shall arrive, the person so nominated shall execute the office to which he shall have been appointed, and shall have all the powers thereof, and shall have and be entitled to the salary and other emoluments and advantages appertaining to the said office during his continuance therein, every such temporary member of Council foregoing all salaries and allowances by him held and enjoyed at the time of his being appointed to such office; and if any ordinary member of the Council of the Governor General or of the Council of either of the Presidencies shall by any infirmity or otherwise be rendered incapable of acting or of attending to act as such, or if any such member shall be absent on leave, and if any person shall have been provisionally appointed as aforesaid, then the place of such member absent or unable to attend shall be supplied by such person; and if no person provisionally appointed to succeed to the office shall be then on the spot, the Governor General in Council or Governor in Council, as the case may be, shall appoint some person to be a temporary member of Council and, until the return of the member so absent or unable to attend, the person so provisionally appointed by the Secretary of State in Council, or so appointed by the Governor General in Council, or Governor in Council, as the case may be, shall execute the office to which he shall have been appointed, and shall have all the powers thereof and shall receive half the salary of the member of Council whose place he supplies, and also half the salary of his office under the Government of India, or the Government of either of the Presidencies, as the case may be, if he hold any such office, the remaining half of such last-named salary being at the disposal of the Government of India or other Government as aforesaid: Provided always, that no person shall be appointed a temporary member of the said Council who might not have been appointed as hereinbefore provided to fill the vacancy supplied by such temporary appointment.

Governors  
of Fort St.  
George and  
Bombay may  
make rules  
for the con-  
duct of  
business in  
their Councils.

28. It shall be lawful for the Governors of the Presidencies of Fort St. George and Bombay, respectively, from time to time to make rules and orders for the conduct of business in their Councils, and any order made or act done in accordance with such directions (except as hereinafter provided respecting laws and regulations) shall be deemed to be the order or act of the Governor in Council.

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29. For the better exercise of the power of making laws and regulations hereinafter vested in the Governors of the said Presidencies in Council respectively, each of the said Governors shall, in addition to the members whereof his Council now by law consist, or may consist, termed herein ordinary members, nominate to be additional members the Advocate-General of the Presidency, or officer acting in that capacity, and such other persons <sup>1</sup> \* \* \* \* as making to him may seem expedient to be members of Council, for the purpose of making laws and regulations only, and such members shall not be entitled to sit or vote at any meeting of Council, except at meetings held for such purpose: Provided that not less than half of the persons so nominated shall be non-official persons, as hereinbefore described, and that the seat in Council of any non-official member accepting office under the Crown in India shall be vacated on such acceptance.

Power to summon additional members to the Councils of Fort St. George and Bombay for the purpose of making laws and regulations.

30. Every additional member of Council so nominated shall be summoned to all meetings held for the purpose of making laws and regulations <sup>2</sup> \* \* \* \*

Summoning of additional members to meetings of Council.

31. It shall be lawful for any such additional member of Council to resign his office to the Governor of the Presidency, and, on acceptance of such resignation by the Governor of the Presidency, such office shall become vacant.

Resignation of additional members.

<sup>3</sup> 32. [*Rep. by the Indian Councils Act, 1892 (55 & 56 Vict., c. 14), s. 4.*]

33. No law or regulation made by any such Governor in Council in accordance with the provisions of this Act shall be deemed invalid by reason only that the proportion of non-official additional members hereby established was not complete at the date of its introduction to the Council or its enactment.

No law to be invalid by reason of incompleteness of number of non-official members.

34. At any meeting of the Council of either of the said Presidencies from which the Governor shall be absent, the senior civil ordinary member of Council present shall preside; <sup>4</sup> \* \* \* \* and in any case of difference of opinion at

Senior civil ordinary member of Council to preside in absence of Governor of Presidency.

<sup>1</sup> The words "not less than four nor more than eight in number" were repealed by the Indian Councils Act, 1909, s. 8, *post*.

<sup>2</sup> The words "for the term of two years from the date of such nomination" were repealed by the Indian Councils Act, 1909, s. 8, *post*.

<sup>3</sup> S. 32 provided for the filling up of vacancies in the number of Additional Members of the Legislative Councils of Madras and Bombay.

<sup>4</sup> The words "and the power of making laws and regulations hereby vested in such Governor in Council shall be exercised only at meetings of such Council at which the Governor or some ordinary member of Council, and four or more members of Council (including under the term 'Members of Council' such additional members as aforesaid), shall be present" were repealed by the Indian Councils Act, 1909, s. 8, *post*.



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meetings of any such Council for making laws and regulations, where there shall be an equality of voices, the Governor, or, in his absence, the senior member then presiding shall have two votes or the casting vote.

35. <sup>1</sup>[*Rep. by the Statute Law Revision Act, 1892 (55 & 56 Vict., c. 19).*]

Governors of  
Presidencies  
to appoint  
subsequent  
meetings and  
adjourn them.

36. It shall be lawful for every such Governor to appoint all<sup>2</sup> \* times and places of meeting of his Council for the purpose of making laws and regulations under the provisions of this Act, and to adjourn or from time to time to authorize such senior ordinary member of Council in his absence to adjourn any meeting for making laws and regulations from time to time and from place to place.

Rules and  
orders for  
conduct of  
business at  
such meet-  
ings.

37. Previously to the first of such meetings of their Councils for the purpose of making laws and regulations under the provisions of this Act, the Governors of the said Presidencies in Council, respectively, shall make rules for the conduct of business at such meetings subject to the sanction of the Governor General in Council; but such rules may be subsequently amended at meetings for the purpose of making laws and regulations, subject to the assent of the Governor: Provided always that it shall be lawful for the Governor General in Council to disallow any such rule and render the same of no effect.

Business to be  
transacted  
at such  
meetings.

38. No business shall be transacted at any meeting of the Council of either of the said Presidencies for the purpose of making laws and regulations (except as last hereinbefore provided) other than the consideration and enactment of measures introduced into such Council for the purpose of such enactment; and it shall not be lawful for any member or additional member to make, or for the Council to entertain, any motion, unless such motion shall be for leave to introduce some measure as aforesaid into Council, or have reference to some measure actually introduced thereinto: Provided always that it shall not be lawful for any member or additional member to introduce, without the previous sanction of the Governor, any measure affecting the public revenues of the Presidency, or by which any charge shall be imposed on such revenues.

Governors to  
assent to laws  
and regula-  
tions of  
Presidencies.

39. When any law or regulation has been made by any such Council at a meeting for the purpose of making laws and regulations as aforesaid, it shall be lawful for the

<sup>1</sup> This section empowered the Governor General in Council to fix the first meetings of the Legislative Councils of Madras and Bombay. It was repealed as being spent.

<sup>2</sup> The word "subsequent" was repealed by 55 & 56 Vict., c. 19.

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Governor, whether he shall or shall not have been present in Council at such meeting, to declare that he assents to, or withholds his assent from, the same.

40. The Governor shall transmit forthwith an authentic copy of every law or regulation to which he shall have so declared his assent to the Governor General, and no such law or regulation shall have validity until the Governor General shall have assented thereto, and such assent shall have been signified by him to, and published by, the Governor: Provided always, that in every case where the Governor General shall withhold his assent from any such law or regulation, he shall signify to the Governor in writing his reason for so withholding his assent.

Governor General to assent to laws and regulations and Presidencies.

41. Whenever any such law or regulation shall have been assented to by the Governor General, he shall transmit to the Secretary of State for India an authentic copy thereof; and it shall be lawful for Her Majesty to signify, through the Secretary of State for India in Council, her disallowance of such law or regulation, and such disallowance shall make void and annul such law or regulation from or after the day on which such Governor shall make known by proclamation, or by signification to the Council, that he has received the notification of such disallowance by Her Majesty.

Power of the Crown to disallow laws and regulations of Presidencies.

42. The Governor of each of the said Presidencies in Council shall have power at meetings for the purpose of making laws and regulations as aforesaid, and, subject to the provisions herein contained, to make laws and regulations for the peace and good government of such Presidency, and for that purpose to repeal and amend any laws and regulations made prior to the coming into operation of this Act by any authority in India, so far as they affect such Presidency: Provided always, that such Governor in Council shall not have the power of making laws or regulations which shall in any way affect any of the provisions of this Act, or of any other Act of Parliament in force, or hereafter to be in force, in such Presidency.

Extent of power to Governor of Presidency in Council to make laws and regulations.

43. It shall not be lawful for the Governor in Council of either of the aforesaid Presidencies, except with the sanction of the Governor General, previously communicated to him, to make regulations or take into consideration any law or regulation for any of the purposes next hereinafter mentioned; that is to say—

Governor of Presidency, except with sanction of Governor General, not to make or take into consideration certain laws or regulations

- (1) affecting the public debt of India, or the customs duties, or any other tax or duty now in force and

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for certain  
purposes.

imposed by the authority of the Government of India for the general purposes of such Government :

- (2) regulating any of the current coin, or the issue of any bills, notes or other paper currency :
- (3) regulating the conveyance of letters by the post office or messages by the electric telegraph within the Presidency :
- (4) altering in any way the Penal Code of India, as established by Act of the Governor General in Council, No. 42<sup>1</sup> of 1860 :
- (5) affecting the religion or religious rites and usages of any class of Her Majesty's subjects in India :
- (6) affecting the discipline or maintenance of any part of Her Majesty's military or naval forces :
- (7) regulating patents or copyright :
- (8) affecting the relations of the Government with foreign Princes or States :

Provided always, that no law or provision of any law or regulation which shall have been made by any such Governor in Council, and assented to by the Governor General as aforesaid shall be deemed invalid only by reason of its relating to any of the purposes comprised in the above list.

Governor  
General may  
establish  
Council for  
making laws  
and regula-  
tions into the  
Bengal Pre-  
sidency,  
etc.

44. The Governor General in Council, so soon as it shall appear to him expedient, shall, by proclamation, extend the provisions of this Act touching the making of laws and regulations for the peace and good government of the Presidencies of Fort Saint George and Bombay to the Bengal Division of the Presidency of Fort William, and shall specify in such proclamation the period at which such provisions shall take effect, and the number of councillors whom the Lieutenant-Governor of the said division may nominate for his assistance in making laws and regulations ; and it shall be further lawful for the Governor General in Council, from time to time and in his discretion, by similar proclamation, to extend the same provisions to the territories known as the North-Western Provinces and the Punjab, respectively.

Constitution  
of such  
Councils.

45. Whenever such proclamation as aforesaid shall have been issued regarding the said division or territories respectively, the Lieutenant-Governor thereof shall nominate, for his assistance in making laws and regulations, such number of councillors as shall be in such proclamation specified : Provided that not less than one-third of such councillors shall in every case be non-official persons, as hereinbefore described, and that the nomination of such councillors shall be subject

<sup>1</sup> Sic. Read "45."

## THE INDIAN COUNCILS ACT, 1861.

to the sanction of the Governor General: And provided further, that at any meeting of any such Council from which the Lieutenant-Governor shall be absent, the member highest in official rank among those who may hold office under the Crown shall preside; <sup>1</sup> \* \* \* and in any case of difference of opinion at any meetings of such Council for making laws and regulations, where there shall be an equality of voices, the Lieutenant-Governor, or such member highest in official rank as aforesaid then presiding, shall have two votes or the casting vote.

46. It shall be lawful for the Governor General, by proclamation as aforesaid, to constitute from time to time new provinces for the purposes of this Act, to which the like provisions shall be applicable; and further to appoint from time to time a Lieutenant-Governor to any province so constituted as aforesaid, and from time to time to declare and limit the extent of the authority of such Lieutenant-Governor, in like manner as is provided by the Government of India Act, 1854,<sup>2</sup> respecting the Lieutenant-Governors of Bengal and the North-Western Provinces.

Power to constitute new provinces and appoint Lieutenant-Governors.

17 & 18 Vict.,  
c. 77.

47. It shall be lawful for the Governor General in Council, by such proclamation as aforesaid, to fix the limits of any presidency, division, province or territory in India, for the purposes of this Act, and further by proclamation to divide or alter from time to time the limits of any such presidency, division, province or territory for the said purposes: Provided always that any law or regulation made by the Governor or Lieutenant-Governor in Council of any presidency, division, province or territory shall continue in force in any part thereof which may be severed therefrom by any such proclamation until superseded by law or regulation of the Governor General in Council, or of the Governor or Lieutenant-Governor in Council of the presidency, division, province or territory to which such parts may become annexed.

Powers of newly constituted Lieutenant-Governors in Council.

48. It shall be lawful for every such Lieutenant-Governor in Council thus constituted to make laws for the peace and good government of his respective division, province or territory; and, except as otherwise hereinbefore specially provided, all the provisions in this Act contained

Power to alter boundaries of presidencies, etc., by proclamation.

<sup>1</sup> The words "and the power of making laws and regulations shall be exercised only at meetings at which the Lieutenant-Governor or some member holding office as aforesaid, and not less than one-half of the Members of Council so summoned as aforesaid, shall be present" were repealed by the Indian Councils Act, 1909, s. 8, *post*.

<sup>2</sup> The Government of India Act, 1854, has been repealed by the Government of India Act, 1915, Sch. IV, *ante*.

## THE INDIAN COUNCILS ACT, 1861.

respecting the nomination of additional members for the purpose of making laws and regulations for the Presidencies of Fort Saint George and Bombay, and limiting the power of the Governors in Council of Fort Saint George and Bombay for the purpose of making laws and regulations, and respecting the conduct of business in the meetings of such Councils for that purpose, and respecting the power of the Governor General to declare or withhold his assent to laws or regulations made by the Governors in Council of Fort Saint George and Bombay, and respecting the power of Her Majesty to disallow the same, shall apply to laws or regulations to be so made by any such Lieutenant-Governor in Council.

Previous assent of the Crown necessary to give validity to proclamation.

49. Provided always that no proclamation to be made by the Governor General in Council under the provisions of this Act, for the purpose of constituting any Council for the presidency, division, provinces or territories hereinbefore named, or any other provinces, or for altering the boundaries of any presidency, division, province or territory, or constituting any new province for the purpose of this Act, shall have any force or validity until the sanction of Her Majesty to the same shall have been previously signified by the Secretary of State in Council to the Governor General.

Provision for the supply of the office of Governor General in certain circumstances,

50. If any vacancy shall happen in the office of Governor General of India when no provisional successor shall be in India to supply such vacancy, then, and in every such case, <sup>1</sup>[the Governor of the Presidency of Fort William in Bengal], the Governor of the Presidency of Fort Saint George or the Governor of the Presidency of Bombay, who shall have been first appointed to the office of Governor by Her Majesty, shall hold and execute the said office of Governor General of India       2\*   \*   \*   \*   \*   \* until a successor shall arrive, or until some person in India shall be duly appointed thereto; and every such acting Governor General shall, during the time of his continuing to act as such, have and exercise all the rights and powers of Governor General of India, and shall be entitled to receive the emoluments and advantages appertaining to the office by him supplied, such acting Governor General foregoing the salary and allowances appertaining to the office of Governor to which he stands appointed, and such office of Governor shall be supplied for the time during which such Governor

<sup>1</sup> Inserted by the Government of India Act, 1912, *post*.

<sup>2</sup> The words "and Governor of the Presidency of Fort William in Bengal" were repealed by *ibid*.

## THE INDIAN COUNCILS ACT, 1861.

3 & 4 Will. 4, shall act as Governor General, in the manner directed in section 63 of the Government of India Act, 1833.<sup>1</sup>  
c. 85.

51. If, on such vacancy occurring, it shall appear to the Governor, who by virtue of this Act shall hold and execute the said office of Governor General, necessary to exercise the powers thereof before he shall have taken his seat in Council, it shall be lawful for him to make known by proclamation this appointment, and his intention to assume the said office of Governor General, and after such proclamation, and henceforth until he shall repair to the place where the Council may assemble, it shall be lawful for him to exercise alone all or any of the powers which might be exercised by the Governor General in Council, except the power of making laws and regulations; and all acts done in the exercise of the said powers, except as aforesaid, shall be of the same force and effect as if they had been done by the Governor General in Council: Provided that all acts done in the said Council after the date of such proclamation, but before the communication thereof to such Council, shall be valid, subject nevertheless to revocation or alteration by such Governor who shall have so assumed the said office of Governor General; and from the date of the vacancy occurring until such Governor shall have assumed the said office of Governor General, the provisions of section 62 of the Government of India Act, 1833<sup>1</sup>, shall be, and the same are declared to be, applicable to the case.

If it appears to Governor necessary to exercise powers before taking his seat in Council he may make his appointment, etc., known by proclamation.

3 & 4 Will. 4,  
c. 85.

52. Nothing in this Act contained shall be held to derogate from or interfere with (except as herein before expressly provided) the rights vested in Her Majesty, or the powers of the Secretary of State for India in Council, in relation to the Government of Her Majesty's dominions in India, under any law in force at the date of the passing of this Act; and all things which shall be done by Her Majesty, or by the Secretary of State as aforesaid, in relation to such government, shall have the same force and validity as if this Act had not been passed.

Nothing in this Act shall derogate from the powers of the Crown of Secretary of State for India in Council.

53. Wherever any act or thing by this Act required or authorised to be done by the Governor General or by the Governors of the Presidencies of Fort Saint George and Bombay in Council, it is not required that such act or thing should be done at a meeting for making laws and regulations, unless where expressly provided.

Meaning of term "in Council."

54. [*Rep. by the Statute Law Revision Act, 1875 (38 & 39 Vict., c. 66.)*]

<sup>1</sup>The Government of India Act, 1833 (except s. 112), has been repealed by the Government of India Act, 1915, Sch. IV, *ante*.

THE GOVERNMENT OF INDIA ACT, 1865.<sup>1</sup>

(28 &amp; 29 Vict., c. 17.)

*An Act to enlarge the powers of the Governor General of India in Council at meetings for making Laws and Regulations, and to amend the Law respecting the Territorial Limits of the several Presidencies and Lieutenant Governorships in India.*

[9th May, 1865.]

Power to make laws for all British subjects in feudatory states of India.

S. 1 to be read as part of s. 22 of Indian Councils Act, 1861. Power to appoint territorial limits of provinces.

Powers of Secretary of State in Council and Crown.

1. The Governor General of India shall have power at meetings for the purpose of making laws and regulations to make laws and regulations for all British subjects of Her Majesty within the dominions of princes and states in India in alliance with Her Majesty whether in the service of the Government of India or otherwise.

2. The preceding section shall be read with, and taken as part of, section 22 of the said Indian Councils Act, 1861.<sup>2</sup>

24 & 25  
Vict., c. 67.

3. [*Rep. by the Statute Law Revision Act, 1878 (41 & 42 Vict., c. 79).*]

4. It shall be lawful for the Governor General of India in Council from time to time to declare and appoint, by proclamation, what part or parts of the Indian territories for the time being under the dominion of Her Majesty shall be or continue subject to each of the Presidencies and Lieutenant-Governorships for the time being subsisting in such territories, and to make such distribution and arrangement, or new distribution and arrangement, of such territories into or among such Presidencies and Lieutenant-Governorships as to the said Governor General in Council may seem expedient,

5. Provided always that it shall be lawful for the Secretary of State in Council to signify to the said Governor General in Council his disallowance of any such proclamation :

and provided further that no such proclamation for the purpose of transferring an entire zilla or district from one Presidency to another, or from one Lieutenant-Governorship to another, shall have any force or validity until the sanction of Her Majesty to the same shall have been previously signified by the Secretary of State in Council to the Governor General.

<sup>1</sup> This Statute has been repealed and re-enacted by the Government of India Act, 1915, *ante*. See first footnote to this Appendix.

<sup>2</sup> Printed, *ante*.

## EXTRACT FROM.

## THE GOVERNMENT OF INDIA ACT, 1869.

(32 &amp; 33 Vict., c. 97.)

*An Act to amend in certain respects the Act for the better government of India.*

\* \* \* \* \*

<sup>2</sup>8. The appointments of the Ordinary Members of the Appointment Governor General's Council and of the Members of Council of Ordinary of the several Presidencies<sup>3</sup> \* \* \* \* shall \* \* \* Members of Council. \* \* \* be made by Her Majesty by warrant under Her Royal Sign Manual.

THE INDIAN COUNCILS ACT, 1869.<sup>1</sup>

(32 &amp; 33 Vict., c. 98.)

*An Act to define the powers of the Governor General of India in Council at meetings for making Laws and Regulations for certain purposes.*

[11th August, 1869.]

WHEREAS doubts have arisen as to the extent of power of the Governor General of India in Council to make laws binding upon native Indian subjects beyond the Indian territories under the dominion of Her Majesty :

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<sup>1</sup> This Statute has been repealed and re-enacted by the Government of India Act, 1915, *ante*. See the first footnote to App. I, *ante*.

<sup>2</sup> See now s. 36 (1) and s. 47 (1) of the Government of India Act, 1915, *ante*.

<sup>3</sup> The words " which by section twenty-nine of the said recited Act\* are to be made by the Secretary of State in Council with the concurrence of a majority of Members present at a meeting," occurred originally after the word " Presidencies," but were repealed by the Statute Law Revision Act, 1883 (46 & 47 Vict., c. 39). The words "after the passing of this Act," which occurred after the word "shall," were repealed by the Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict., c. 54).

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\* The Act here referred to was the Government of India Act, 1858 (21 & 22 Vict., c. 106), which provided for the transfer of the East India Company to the Crown.



## THE INDIAN COUNCILS ACT, 1869.

Power to  
make laws  
for native  
Indian  
subjects  
anywhere.

1. 1\* \* \* \* The Governor General of India in Council shall have power at meetings for the purpose of making laws and regulations to make laws and regulations for all persons, being native Indian subjects of Her Majesty 1\* \* \* \* without and beyond as well as within the Indian territories under the dominion of Her Majesty.

2. [*Rep. by the Statute Law Revision Act, 1883 (46 & 47 Vict., c. 39).*]

Power to  
repeal or  
amend  
certain  
sections of  
Government  
of India  
Act, 1833.

3. Notwithstanding anything in the Indian Councils Act or in any other Act of Parliament contained, any law or regulation which shall hereafter be made by the Governor General in Council in manner in the said Indian Councils Act provided shall not be invalid by reason only that it may repeal or affect any of the provisions of the Government of 3 & 4 Will. India Act, 1833,<sup>2</sup> contained in sections 84 and 86 of the said <sup>4</sup>, c. 85. Act.

THE GOVERNMENT OF INDIA ACT, 1870.<sup>3</sup>

(33 Vict., c. 3.)

*An Act to make better provision for making Laws and Regulations of certain parts of India, and for certain other purposes relating thereto.*

[25th March, 1870.]

WHEREAS it is expedient that provision should be made to enable the Governor General of India in Council to make Regulations for the peace and good government of certain territories in India otherwise than at meetings for the purpose of making laws and regulations held under the provisions of the<sup>4</sup> Indian Councils Act, 1861; and also for certain other purposes connected with the government of India:

24 & 25  
Vict., c. 67.

<sup>1</sup> The words "From and after the passing of this Act," at the beginning of this section and the words "Her heirs and successors," which occurred after the words "subjects of Her Majesty," were repealed by the Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict., c. 54).

<sup>2</sup> Repealed (except s. 112) by the Government of India Act, 1915, *ante*.

<sup>3</sup> This Statute has been repealed and re-enacted by the Government of India Act, 1915, *ante*. See the first footnote to Appendix I, *ante*.

<sup>4</sup> Printed *ante*.

## THE GOVERNMENT OF INDIA ACT, 1870.

1. Every Governor of a Presidency in Council, Lieutenant-Governor or Chief Commissioner, whether the Governorship or Lieutenant-Governorship or Chief Commissioner-ship be now in existence or may hereafter be established, shall have power to propose to the Governor General in Council drafts of any Regulations, together with the reasons for proposing the same, for the peace and government of any part or parts of the territories under his government or administration to which the Secretary of State for India shall from time to time by resolution in Council, declare the provisions of this section to be applicable from any date to be fixed in such resolution ;

Power for Executive Government to make Regulations for certain tracts.

and the Governor General in Council shall take such draft and reasons into consideration ;

and when any such draft shall have been approved of by the Governor General in Council, and shall have received the Governor General's assent, it shall be published in the Gazette of India and in the local Gazette, and shall thereupon have like force of law and be subject to the like disallowances as if it had been made by the Governor General of India in Council at a meeting for the purpose of making laws and regulations.

The Secretary of State for India in Council may from time to time withdraw such power from any Governor, Lieutenant-Governor or Chief Commissioner, on whom it has been conferred, and may from time to time restore the same as he shall think fit.

2. The Governor General shall transmit to the Secretary of State for India in Council an authentic copy of every Regulation which shall have been made under the provisions of this Act ;

Copies of Regulations to be sent to Secretary of State, etc.

And all laws or regulations hereafter made by the Governor General of India in Council, whether at a meeting for the purpose of making laws and regulations or under the said provisions, shall control and supersede any Regulation in anywise repugnant thereto which shall have been made under the same provisions.

3. Whenever the Governor General in Council shall hold a meeting for the purpose of making laws and regulations at any place within the limits of any territories now or hereafter placed under the administration of a Lieutenant-Governor or a Chief Commissioner, the Lieutenant-Governor or Chief Commissioner respectively shall be *ex-officio* an Additional Member of the Council of the Governor General

Lieutenant-Governors and Chief Commissioners when to be members *ex-officio* of the Governor General's

## THE GOVERNMENT OF INDIA ACT, 1870.

Legislative  
Council.

for that purpose, in excess (if necessary) of the maximum number of twelve specified by the said Act.

4. [*Rep. by the Statute Law Revision Act, 1883 (46 & 47 Vict., c. 39).*]

Difference  
between  
Governor  
General and  
Council.

5. Whenever any measure shall be proposed before the Governor General of India in Council whereby the safety, tranquillity or interests of the British possessions in India, or any part thereof, are or may be, in the judgment of the said Governor General, essentially affected, and he shall be of opinion either that the measure proposed ought to be adopted and carried into execution, or that it ought to be suspended or rejected, and the majority in Council then present shall dissent from such opinion, the Governor General may, on his own authority and responsibility, suspend or reject the measure in part or in whole, or adopt and carry it into execution ;

but in every such case any two Members of the dissentient majority may require that the said suspension, rejection or adoption, as well as the fact of their dissent, shall be notified to the Secretary of State for India, and such notification shall be accompanied by copies of the minutes (if any) which the Members of the Council shall have recorded on the subject.

Power to ap-  
point natives  
of India to  
certain  
offices.

6. Whereas it is expedient that additional facilities should be given for the employment of natives of India of proved merit and ability in the Civil Service of Her Majesty in India :

Be it enacted, that nothing in the Government of India Act, 1858,<sup>1</sup> or in the Indian Civil Service Act, 1861,<sup>2</sup> or in any other Act of Parliament or other law now in force in India, shall restrain the authorities in India by whom appointments are or may be made to offices, places and employments in the Civil Service of Her Majesty in India from appointing any native of India to any such office, place or employment, although such native shall not have been admitted to the said Civil Service of India in manner in section 32 of the first-mentioned Act provided, but subject to such rules as may be from time to time prescribed by the Governor General in Council, and sanctioned by the Secretary of State in Council, with the concurrence of a majority of members present ;

and that for the purpose of this Act the words " native of India " shall include any person born and domiciled within

<sup>1</sup> Repealed (except s. 4) by the Government of India Act, 1915, *ante*.

<sup>2</sup> Repealed by *ibid.*

THE GOVERNMENT OF INDIA ACT, 1870 ; THE INDIAN  
COUNCILS ACTS, 1871.

the dominions of Her Majesty in India, of parents habitually resident in India, and not established there for temporary purposes only ;

and that it shall be lawful for the Governor General in Council to define and limit from time to time the qualification of natives of India thus expressed :

Provided that every Resolution made by him for such purpose shall be subject to the sanction of the Secretary of State in Council, and shall not have force until it has been laid for thirty days before both Houses of Parliament.

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THE INDIAN COUNCILS ACT, 1871.<sup>1</sup>

(34 & 35 Vict., c. 34.)

*An Act to extend in certain respects the power of Local Legislatures in India as regards European British subjects.*

[29th June, 1871.]

WHEREAS it is expedient that the power of making laws and regulations conferred on Governors of Presidencies in India in Council by the Indian Councils Act,<sup>2</sup> (24 & 25 Vict., c. 67), section 42, should in certain respects be extended :

1. No law or Regulation heretofore made or hereafter to be made by any Governor or Lieutenant-Governor in Council in India in manner prescribed by the aforesaid Act shall be invalid only by reason that it confers on Magistrates, being Justices of the Peace, the same jurisdiction over European British subjects as such Governor or Lieutenant-Governor in Council, by regulations made as aforesaid, could have lawfully conferred or could lawfully confer on Magistrates in the exercise of authority over natives in the like cases.

Power for local legislature to confer jurisdiction over European British subjects.

<sup>3</sup>2. When evidence has been given in any proceeding under this Act before a Magistrate, being a Justice of the Peace, which appears to be sufficient for the conviction of the accused person, being a European British subject, of an offence for which, if a native, he would under existing law

Committal of accused European British subject to High Court.

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<sup>1</sup>This Statute has been repealed and re-enacted by the Government of India Act, 1915, *ante*. See the first footnote to App. I, *ante*.

<sup>2</sup>The Indian Councils Act, 1861, printed *ante*.

<sup>3</sup>The provisions of s. 2 were made unnecessary by s. 447 of the Code of Criminal Procedure, 1898 (V of 1898).

## THE INDIAN COUNCILS ACTS, 1871 AND 1874.

be triable exclusively before the Court of Session, or which, in the opinion of the Magistrate, is one which ought to be tried by the High Court, the accused person, if such European British subject, shall be sent for trial by the Magistrate before the High Court.

Power for local legislatures to amend and repeal certain laws.

3. And whereas by an Act passed by the Governor General of India in Council,<sup>1</sup> Indian Act No. XXII of 1870, it is provided that certain Acts heretofore passed by the Governors of Madras and Bombay respectively in Council, and by the Lieutenant-Governor of Bengal in Council, shall, so far as regards the liability of European British subjects to be convicted and punished thereunder be and be deemed to be as valid as if they had been passed by the Governor General of India in Council at a meeting for the purpose of making laws and regulations :

Be it further enacted that the said Governors and Lieutenant-Governors in Council respectively shall have power to repeal and amend any of the said Acts so declared valid by Acts to be passed under the provisions of the<sup>2</sup> Indian Councils Act.

24 & 25 Vict.,  
c. 67.

THE INDIAN COUNCILS ACT, 1874.<sup>3</sup>

(37 & 38 Vict., c. 91.)

*An Act to amend the Law relating to the Council of the Governor General of India.*

[7th August, 1874.]

WHEREAS it is expedient to amend the law relating to the Council of the Governor General of India :

Number of Ordinary Members of Governor General's Council may be increased.

1. It shall be lawful for Her Majesty, if she shall see fit, to increase the number of the Ordinary Members of the Council of the Governor General of India to six, by appointing any person from time to time by warrant under Her Royal Sign Manual to be an Ordinary Member of the said Council in addition to the Ordinary Members thereof appointed under section 3 of the Indian Councils Act, 1861<sup>2</sup> and under section 8 of the Government of India Act, 1860.<sup>2</sup>

24 & 25  
Vict., c. 67.  
32 & 33  
Vict., c. 97.

<sup>1</sup> Act. XXII of 1870 (*An Act to confirm certain laws affecting European British subjects*) was repealed by the Code of Criminal Procedure, 1882 (Act X of 1882).

<sup>2</sup> Printed *ante*.

<sup>3</sup> This Statute has been repealed and re-enacted by the Government of India Act, 1916, *ante*. See first footnote to App. I, *ante*.

## THE INDIAN COUNCILS ACTS, 1874 AND 1892.

The law for the time being in force with reference to Ordinary Members of the Council of the Governor General of India shall apply to the person so appointed by Her Majesty under this Act.

2. Whenever a Member of Council<sup>1</sup> \* \* \* \* \* Number of Members of Council may be subsequently diminished.

shall have been appointed under the first section of this Act, it shall be lawful for Her Majesty, if she shall see fit, to diminish from time to time the number of the Ordinary Members of the Council of the Governor General of India to five, by abstaining so long as she shall deem proper from filling up any vacancy or vacancies occurring in the offices of the Ordinary Members of the said Council appointed under section 3 of the Indian Councils Act, 1861,<sup>2</sup> and under section 8 of the Government of India Act, 1869,<sup>2</sup> not being a vacancy in the office of the Ordinary Members of Council required by law to be a barrister or a member of the Faculty of Advocates of Scotland;

14 & 25  
Vict., c. 67.  
12 & 33  
Vict., c. 97.

and whenever the Secretary of State for India shall have informed the Governor General of India that it is not the intention of Her Majesty to fill up any vacancy, no temporary appointment shall be made to such vacancy under section 27 of the<sup>2</sup> Indian Councils Act, 1861;

and if any such temporary appointment shall have been made previously to the receipt of such information, the tenure of office of the person temporarily appointed shall cease and determine from the time of the receipt of such information by the Governor General.

3. Nothing in this Act contained shall affect the provisions of section 8 of the Indian Councils Act, 1861,<sup>2</sup> or the provisions of section 5 of the Government of India Act, 1870,<sup>2</sup> or any power or authority vested by law in the Governor General of India in respect of his Council or of the Members thereof.

24 & 25  
Vict., c. 67.  
3 Vict., c. 3.

THE INDIAN COUNCILS ACT, 1892.<sup>3</sup>

[55 & 56 Vict., c. 14.]

*An Act to amend the Indian Councils Act, 1861.*

[20th June, 1892.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual

<sup>1</sup> The words "who shall be called the Member of Council for public works purposes" in s. 1, and the words "for public works purposes" in s. 2 were repealed by the Indian Councils Act, 1904, s. 1 (4 Edw. 7, c. 26).

<sup>2</sup> Printed *ante*.

<sup>3</sup> This Statute has been repealed and re-enacted by the Government of India Act, 1915, *ante*. See first footnote to App. I, *ante*. For Despatch from Secretary of State regarding this Statute, *See* App. III, post.

## THE INDIAN COUNCILS ACT, 1892.

and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

[Section 1, making provisions for increase of number of members of Indian Councils for making laws and regulations, and section 2, modifying the provisions of 24 & 25 Vict., c. 67, as to business at legislative meetings, were repealed by 9 Edw. 7, c. 4, s. 8 (3).]

Meaning of  
24 & 25 Vict.,  
c. 67, s. 22,  
3 & 4 Will. 4,  
c. 85, and  
16 & 17 Vict.,  
c. 95.

3. It is hereby declared that in the twenty-second section of the Indian Councils Act, 1861,<sup>1</sup> it was and is intended that the words "Indian territories now under the dominion of Her Majesty" should be read and construed as if the words "or hereafter" were and had at the time of the passing of the said Act been inserted next after the word "now"; and further, that the Acts third and fourth William the Fourth, Chapter eighty-five,<sup>2</sup> and sixteenth and seventeenth Victoria, Chapter ninety-five,<sup>3</sup> respectively, shall be read and construed as if at the date of the enactment thereof respectively it was intended and had been enacted that the said Acts respectively should extend to and include the territories acquired after the dates thereof respectively by the East India Company, and should not be confined to the territories at the dates of the said enactments respectively in the possession and under the Government of the said Company.

Repeal.  
Power to fill  
up vacancy  
in number of  
additional  
members.

4. Sections 13 and 32 of the Indian Councils Act, 1861,<sup>4</sup> are hereby repealed, and it is enacted that—

(1) If any additional member of Council, or any member of the Council of a Lieutenant-Governor,  
\* \* \* \* \* shall be absent from India or unable to attend to the duties of his office for a period of two consecutive months, it shall be lawful for the Governor General, the Governor or the Lieutenant-Governor, to whose Council such additional member or member may have been nominated (as the case may be) to declare, by a notification published in the Government Gazette, that the seat in Council of such person has become vacant.

5 \* \* \* \* \*

<sup>1</sup> Printed, *ante*.

<sup>2</sup> The Government of India Act, 1833 (except s. 112) has been repealed by the Government of India Act, 1915, *ante*.

<sup>3</sup> The Government of India Act, 1853, has been repealed by *ibid*.

<sup>4</sup> The words "appointed under the said Act or this Act" were repealed by the Indian Councils Act, 1909, Sch. II, *post*.

<sup>5</sup> Sub-clause (2) of s. 4 providing for the filling up of vacancies occurring by absence from India, inability to attend to duty, death, acceptance of office or resignation duly accepted, was repealed by the Indian Councils Act, 1909, s. 8, and Sch. II, *post*. This is now provided for by the *Regulations for the nomination and election of Additional Members*.

## THE INDIAN COUNCILS ACTS, 1892 AND 1909.

5. The Local Legislature of any province in India may, from time to time, by Acts passed under and subject to the provisions of the Indian Councils Act, 1861,<sup>2</sup> and with the previous sanction of the Governor General, but not otherwise, repeal or amend as to that province any law or regulation made either before or after the passing of this Act by any authority in India other than that Local Legislature :

Provided that an Act, or a provision of an Act, made by a Local Legislature, and subsequently assented to by the Governor General, in pursuance of the Indian Councils Act, 1861,<sup>2</sup> shall not be deemed invalid by reason only of its requiring the previous sanction of the Governor General under this section.

6. In this Act —

the expression “ Local Legislature ” means—

Definitions.

- (1) the Governor in Council for the purpose of making laws and regulations of the respective provinces of Fort St. George and Bombay ; and
- (2) the Council for the purpose of making laws and regulations of the Lieutenant-Governor of any province to which the provisions of the Indian Councils Act, 1861,<sup>2</sup> touching the making of laws or regulations, have been or are hereafter extended or made applicable :

the expression “ province ” means any Presidency, division, province or territory over which the powers of any Local Legislature for the time being extend.

7. Nothing in this Act shall detract from or diminish the powers of the Governor General in Council at meetings for the purpose of making laws and regulations.

Saving of powers of Governor General in Council.

8. This Act may be cited as the Indian Councils Act, 1892 ; and the Indian Councils Act, 1861,<sup>1</sup> and this Act may be cited together as the Indian Councils Acts, 1861 and 1892.

Short title.

THE INDIAN COUNCILS ACT, 1909.<sup>2</sup>

[9 *Edw. 7, Chapter 4.*]

*An Act to amend the Indian Councils Acts, 1861 and 1892 and the Government of India Act, 1833.*

[25th May, 1909.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual

<sup>1</sup> Printed *ante*.

<sup>2</sup> This Statute has been repealed and re-enacted by the Government of India Act, 1915, *ante*. See first footnote to App. I, *ante*.



## THE INDIAN COUNCILS ACT, 1909.

and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Amendment  
of constitu-  
tion of  
Legislative  
Councils.

1. (1) The additional members of the Councils for the purpose of making laws and regulations (hereinafter referred to as Legislative Councils) of the Governor General and of the Governors of Fort Saint George and Bombay, and the members of the Legislative Councils already constituted, or which may hereafter be constituted, of the several Lieutenant-Governors of Provinces, instead of being all nominated by the Governor General, Governor or Lieutenant-Governor in manner provided by the Indian Councils Acts, 1861 and 1892,<sup>1</sup> shall include members so nominated and also members elected in accordance with regulations made under this Act, and references in those Acts to the members so nominated and their nomination shall be construed as including references to the members so elected and their election.

24 & 25 Vict.  
c. 87.  
55 & 56 Vict.,  
c. 14.

(2) The number of additional members or members so nominated and elected, the number of such members required to constitute a quorum, the term of office of such members and the manner of filling up casual vacancies occurring by reason of absence from India, inability to attend to duty, death, acceptance of office, or resignation duly accepted, or otherwise, shall, in the case of each such Council, be such as may be prescribed by regulations made under this Act :

Provided that the aggregate number of members so nominated and elected shall not, in the case of any Legislative Council mentioned in the first column of the First Schedule to this Act, exceed the number specified in the second column of that Schedule.

Constitution  
and pro-  
cedure of  
Executive  
Councils of  
Governors of  
Fort Saint  
George and  
Bombay.

2. (1) The number of ordinary members of the Councils of the Governors of Fort Saint George and Bombay shall be such number not exceeding four as the Secretary of State in Council may from time to time direct, of whom two at least shall be persons who at the time of their appointment have been in the service of the Crown in India for at least twelve years.

(2) If at any meeting of either of such Councils there is an equality of votes on any question, the Governor or other person presiding shall have two votes or the casting vote.

Power to  
constitute

3. (1) It shall be lawful for the Governor General in Council, with the approval of the Secretary of State in

<sup>1</sup> See Indian Councils Act, 1892, s. 8, *ante*.

<sup>2</sup> Cf. the Government of India Act, 1912, s. 2, *post*.

## THE INDIAN COUNCILS ACT, 1909.

Council, by proclamation, to create a Council in the Bengal Provincial Division of the Presidency of Fort William for the purpose of assisting the Lieutenant-Governor in the executive government of the province, and by such proclamation—

Executive  
Councils.

- (a) to make provision for determining what shall be the number (not exceeding four) and qualifications of the members of the Council; and
- (b) to make provision for the appointment of temporary or acting members of the Council during the absence of any member from illness or otherwise, and for the procedure to be adopted in case of a difference of opinion between a Lieutenant-Governor and his Council, and in the case of equality of votes, and in the case of a Lieutenant-Governor being obliged to absent himself from his Council from indisposition or any other cause.

(2) It shall be lawful for the Governor General in Council, with the like approval, by a like proclamation, to create a Council in any other province under a Lieutenant-Governor for the purpose of assisting the Lieutenant-Governor in the executive government of the province: Provided that, before any such proclamation is made, a draft thereof shall be laid before each House of Parliament for not less than sixty days during the session of Parliament, and, if before the expiration of that time an address is presented to His Majesty by either House of Parliament against the draft or any part thereof, no further proceedings shall be taken thereon, without prejudice to the making of any new draft.

(3) Where any such proclamation has been made with respect to any province, the Lieutenant-Governor may, with the consent of the Governor General in Council, from time to time, make rules and orders for the more convenient transaction of business in his Council, and any order made or act done in accordance with the rules and orders so made shall be deemed to be an act or order of the Lieutenant-Governor in Council.

(4) Every member of any such Council shall be appointed by the Governor General with the approval of His Majesty, and shall, as such, be a member of the Legislative Council of the Lieutenant-Governor, in addition to the members nomi-

## THE INDIAN COUNCILS ACT, 1909.

nated by the Lieutenant-Governor and elected under the provisions of this Act.

Appointment  
of Vice-Pres-  
idents.

4. The Governor General and the Governors of Fort Saint George and Bombay, and the Lieutenant-Governor of every province, respectively, shall appoint a member of their respective Councils to be Vice-President thereof, and, for the purpose of temporarily holding and executing the office of Governor General or Governor of Fort Saint George or Bombay and of presiding at meetings of Council in the absence of the Governor General, Governor or Lieutenant-Governor, the Vice-President so appointed shall be deemed to be the senior member of Council and the member highest in rank, and the Indian Councils Act, 1861,<sup>1</sup> and sections sixty-two and sixty-three of the Government of India Act, 1833,<sup>2</sup> shall have effect accordingly. <sup>3 and 4 Will. 4, c. 85.</sup>

Power to  
extend busi-  
ness of  
Legislative  
Councils.

5. (1) Notwithstanding anything in the Indian Councils Act, 1861,<sup>1</sup> the Governor General in Council, the Governors in Council of Fort Saint George and Bombay, respectively, and the Lieutenant-Governor or Lieutenant-Governor in Council of every province, shall make rules authorising at any meeting of their respective Legislative Councils the discussion of the Annual Financial Statement of the Governor General in Council or of their respective Local Governments, as the case may be, and of any matter of general public interest, and the asking of questions, under such conditions and restrictions as may be prescribed in the rules applicable to the several Councils.

(2) Such rules as aforesaid may provide for the appointment of a member of any such Council to preside at any such discussion in the place of the Governor General, Governor or Lieutenant-Governor, as the case may be, and of any Vice-President.

(3) Rules under this section, where made by a Governor in Council, or by a Lieutenant-Governor or a Lieutenant-Governor in Council, shall be subject to the sanction of the Governor General in Council, and where made by the Governor General in Council shall be subject to the sanction of the Secretary of State in Council, and shall not be subject to alteration or amendment by the Legislative Council of the Governor General, Governor or Lieutenant-Governor.

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<sup>1</sup> Printed *ante*.

<sup>2</sup> The Act of 1833 (except s. 112) has been repealed by the Government of India Act, 1915, *ante*.

THE INDIAN COUNCILS ACT, 1909.

6. The Governor General in Council shall, subject to the approval of the Secretary of State in Council, make regulations as to the conditions under which and manner in which persons resident in India may be nominated or elected as members of the Legislative Councils of the Governor General, Governors and Lieutenant-Governors, and as to the qualifications for being, and for being, nominated or elected, a member of any such Council, and as to any other matter for which regulations are authorised to be made under this Act, and also as to the manner in which those regulations are to be carried into effect. Regulations under this section shall not be subject to alteration or amendment by the Legislative Council of the Governor General.

7. All proclamations, regulations and rules made under this Act, other than rules made by a Lieutenant-Governor for the more convenient transaction of business in his Council, shall be laid before both Houses of Parliament as soon as may be after they are made.

8. (1) This Act may be cited as the Indian Councils Act, 1909, and shall be construed with the Indian Councils Acts, 1861<sup>1</sup> and 1892,<sup>1</sup> and those Acts, the Indian Councils Act, 1839,<sup>1</sup> the Indian Councils Act, 1871,<sup>1</sup> the Indian Councils Act, 1874,<sup>1</sup> the Indian Councils Act, 1904, and this Act may be cited together as the Indian Councils Acts, 1861 to 1909.

(2) This Act shall come into operation on such date or dates as the Governor General in Council, with the approval of the Secretary of State in Council, may appoint, and different dates may be appointed for different purposes and provisions of this Act and for different Councils.

On the date appointed for the coming into operation of this Act as respects any Legislative Council, all the nominated members of the Council then in office shall go out of office, but may, if otherwise qualified, be re-nominated or be elected in accordance with the provisions of this Act.

(3) The enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.

<sup>1</sup> Printed *ante*.

<sup>2</sup> The Act came into operation for all purposes and for all Councils on the 15th November, 1909—see Gazette of India Extraordinary, dated 15th November, 1909, p. 1.

## THE INDIAN COUNCILS ACT, 1909.

## SCHEDULES.

[Section 1.]

FIRST SCHEDULE.<sup>1</sup>*Maximum Numbers of Nominated and Elected Members of Legislative Councils.*

Legislative Council.	Maximum number.
Legislative Council of the Governor General . . .	60
Legislative Council of the Governor of Fort Saint George.	50
Legislative Council of the Governor of Bombay .	50
2           *           *           *           *	*
Legislative Council of the Lieutenant-Governor of the United Provinces of Agra and Oudh.	50
3           *           *           *           *	*
Legislative Council of the Lieutenant-Governor of the Province of the Punjab.	30
Legislative Council of the Lieutenant-Governor of the Province of Burma.	30
Legislative Council of the Lieutenant-Governor of any Province which may hereafter be constituted.	30
* [Legislative Council of the Governor of Fort William in Bengal.]	50
* [Legislative Council of the Lieutenant-Governor of Bihar and Orissa.]	50

<sup>1</sup> See now First Sch. to the Government of India Act, 1915, *ante*.<sup>2</sup> Entry relating to the Legislative Council of the Lieutenant-Governor of Bengal was repealed by the Government of India Act, 1912, *post*.<sup>3</sup> Entry relating to the Legislative Council of the Lieutenant-Governor of Eastern Bengal and Assam was repealed by *ibid*.<sup>4</sup> Inserted by *ibid*.

## THE INDIAN COUNCILS ACT, 1909.

## SECOND SCHEDULE.

[Section 8.]

*Enactments repealed.*

Session and Chapter.	Short Title.	Extent of Repeal.
<sup>1</sup> 24 and 25 Vict., c. 67.	The Indian Councils Act, 1861.	<p>In section ten, the words "not less than six nor more than twelve in number."</p> <p>In section eleven, the words "for the term of two years from the date of such nomination."</p> <p>In section fifteen, the words from "and the power of making laws and regulations" to "shall be present."</p> <p>In section twenty-nine, the words "not less than four nor more than eight in number."</p> <p>In section thirty, the words "for the term of two years from the date of such nomination."</p> <p>In section thirty-four, the words from "and the power of making laws and regulations" to "shall be present."</p> <p>In section forty-five, the words from "and the power of making laws and regulations" to "shall be present."</p>
<sup>1</sup> 55 and 56 Vict., c.14.	The Indian Councils Act, 1892.	<p>Sections one and two.</p> <p>In section four, the words "appointed under the said Act or this Act" and paragraph (2).</p>

THE GOVERNMENT OF INDIA ACT, 1912.<sup>1</sup>

[2 &amp; 3 GEO. 5, CHAPTER 6.]

*An Act to make such amendment; in the Law relating to the government of India as are consequential on the appointment of a separate Governor of Fort William in Bengal and other administrative changes in the local government of India.*

[25TH JUNE, 1912.]

WHEREAS His Majesty has been pleased to appoint a Governor of the Presidency of Fort William in Bengal as delimited by a proclamation made by the Governor General in Council and dated the twenty-second day of March, nineteen hundred and twelve :

And whereas the Governor General in Council by two further proclamations of the same date has constituted a new province under a Lieutenant-Governor, styled the province of Bihar and Orissa, and has taken the province of Assam under the immediate authority and management of the Governor General in Council :

And whereas it is expedient to declare what powers are exerciseable by the Governor and Governor in Council of the Presidency of Fort William in Bengal and to make other provisions with respect to the administrative changes effected as aforesaid :

Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

**Powers of  
Governor of  
Fort William  
in Bengal.**

1. (1) It is hereby declared that the Governor and Governor in Council of the Presidency of Fort William in Bengal shall, within that presidency as so delimited as aforesaid, have all the rights, duties, functions, and immunities which the Governors and Governors in Council of the Presidencies of Fort St. George and Bombay respectively possess, and all enactments relating to the Governors of those presidencies and the Councils (whether for executive or legislative purposes) thereof and the members of those Councils shall apply accordingly to the Governor of the

<sup>1</sup> This Statute has been repealed and re-enacted by the Government of India Act, 1915, *ante*. See first footnote to App. I, *ante*.

## THE GOVERNMENT OF INDIA ACT, 1912.

Presidency of Fort William in Bengal, and His Council and the members of that Council :

Provided that—

- (a) if the Governor General in Council reserves to himself any powers now exercisable by him in relation to the Presidency of Fort William in Bengal, those powers shall continue to be exercisable by the Governor General in Council in the like manner and to the like extent as heretofore ; and
- (b) it shall not be obligatory to nominate the Advocate General of the Presidency of Fort William in Bengal or any officer acting in that capacity to be a member of the Legislative Council of the Governor of that presidency.

(2) The power of the Governor General in Council under section one of the Indian Presidency Towns Act, 1815,<sup>1</sup> to extend the limits of the town of Calcutta shall be transferred to the Governor in Council of the Presidency of Fort William in Bengal.

2. The provisions of sub-section (1) of section three of the Indian Councils Act, 1909<sup>2</sup> (which relate to the constitution of provincial Executive Councils), shall apply to the province of Bihar and Orissa in like manner as they applied to the province of the Bengal division of the Presidency of Fort William.

Provisions as to the province of Bihar.

3. It shall be lawful for the Governor General in Council by proclamation to extend, subject to such modifications and adaptations as he may consider necessary, the provisions of the Indian Councils Act, 1861<sup>3</sup> to 1909,<sup>2</sup> touching the making of laws and regulations for the peace and good government of provinces under Lieutenant-Governors (including the provisions as to the constitution of Legislative Councils for such provinces and the business to be transacted therein) to any territories for the time being under a Chief Commissioner, and where such provisions have been applied to any such territories the proviso to section three of the Government of India Act, 1854<sup>3</sup> (which relates to the alteration of laws and regulations in such territories), shall not apply to those territories.

Creation of Legislative Councils of Chief Commissioners

<sup>1</sup> The Indian Presidency Towns Act, 1815, has been wholly repealed by the Government of India Act, 1915, Sch. IV. See now §. 62 of the latter Act, *ante*.

<sup>2</sup> Printed *ante*.—See Indian Councils Act, 1909, s. 8, *ante*.

<sup>3</sup> The Government of India Act, 1854, has been repealed by the Government of India Act, 1915, *ante*.



## THE GOVERNMENT OF INDIA ACT, 1912.

Amendment  
and repeal of  
Acts and  
saving.

4. (1) The enactments mentioned in Part I of the Schedule to this Act shall have effect subject to the amendments therein specified, and section fifty-seven of the East India Company Act, 1793,<sup>1</sup> and section seventy-one of the Government of India Act, 1833<sup>1</sup> (which relate to the filling up of vacancies in the Indian Civil Service), and the other enactments mentioned in Part II of that Schedule are hereby repealed.

Short title  
and com-  
mencement.

(2) Nothing in this Act or in the said recited proclamations shall affect the power of the Governor General in Council of making new distributions and arrangements of territories into and among the various presidencies and Lieutenant-Governorships, and it is hereby declared that the said power extend to territories under the immediate authority and management of the Governor General in Council as well as to territories subject to the several presidencies and Lieutenant-Governorships.

5. This Act may be cited as the Government of India Act, 1912, and shall come into operation<sup>2</sup> on such day as the Governor General in Council, with the approval of the Secretary of State in Council, may appoint.

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SCHEDULE.

## PART I.

*Amendments.*

In section fifty of the Indian Councils Act, 1861<sup>3</sup> (24 & 25 Vict., c. 67), after the words "then and in every such case," there shall be inserted the words "the Governor of the Presidency of Fort William in Bengal."

In the First Schedule to the Indian Councils Act, 1909<sup>3</sup> (9 Edw. 7 c. 4), there shall be inserted—

"Legislative Council of the Governor of Fort William in Bengal . . . . .	50
"Legislative Council of the Lieutenant-Governor of Bihar and Orissa . . . . .	50"

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<sup>1</sup> The East Indian Company Act, 1793, and the Government of India Act, 1833 (except s. 112), have been repealed by the Government of India Act, 1915, Sch. IV, *ante*.

<sup>2</sup> The Act came into operation on the 1st August, 1912—see Home Department notification No. 1626 of that date.

<sup>3</sup> Printed, *ante*.

## THE GOVERNMENT OF INDIA ACT, 1912.

## PART II.

*Repeals.*

Sections fifty-three and fifty-seven of the East India Company Act, 1793<sup>1</sup> (33 Geo. 3, c. 52).

In section sixty-two of the Government of India Act, 1833<sup>2</sup> (3 & 4 Will. 4, c. 85), the words “and Governor of the Presidency of Fort William in Bengal,” and section seventy-one of the same Act.

In section fifty of the Indian Councils Act, 1861<sup>3</sup> (24 & 25 Vict., c. 67), the words “and Governor of the Presidency of Fort William in Bengal.”

In the First Schedule to the Indian Councils Act, 1909<sup>3</sup> (9 Edw. 7, c. 4), the following words :—

“ Legislative Council of the Lieutenant-Governor of the Bengal Division of the Presidency of Fort William .	50
“ Legislative Council of the Lieutenant-Governor of the Province of Eastern Bengal and Assam . . . . .	50 ”

<sup>1</sup> The whole Act has been repealed by the Government of India Act, 1915, Sch. IV, *ante*.

<sup>2</sup> The Government of India Act, 1833 (except s. 112), has been repealed by *ibid*.

<sup>3</sup> Printed, *ante*.

## APPENDIX II.

DESPATCH FROM THE SECRETARY OF STATE REGARDING THE  
INDIAN COUNCILS ACT, 1861.<sup>1</sup>

No. 14 of 1861.

From

The RIGHT HON'BLE SIR CHARLES WOOD,<sup>2</sup> BART.,  
Her Majesty's Secretary of State for India*India Office, London, the 9th August, 1861.*

MY LORD,

I herewith transmit a copy of the Act<sup>1</sup> recently passed by Parliament to make better provision for the constitution of the Council of the Governor General of India, and other purposes, and in so doing I take the opportunity of acknowledging the receipt of the letters noted in the margin, and at the same time of expressing my obligations for the valuable assistance I have derived from the several communications which I have received from Your Lordship in Council, bearing on the important subjects for which provision is made by the Act.

Acknowledgments as to past legislation.

2. In forwarding to Your Lordship in Council the Act which brings to a close the labours of the present Legislative Council of India, it is due to that body that I should place upon record the high sense I entertain of the important services it has rendered in the marked improvement which it has effected in the legislation of India. Since the year 1853, when the Council received its present constitution, it has had to deal with some of the most important questions which could have been submitted to the consideration of any legislative body. The projects of law laid before it have been carefully considered and ably discussed, and the result of its labours has been to place on the Statute-book of India a series of sound and judicious measures which eminently establish its claim to the gratitude of the country and the thanks of Her Majesty's Government.

<sup>1</sup> The Indian Councils Act, 1861. See Appendix I, *ante*.

<sup>2</sup> Afterwards Viscount Halifax.

<sup>3</sup> See *Selection of Papers relating to the Constitution and Functions of the Indian Legislative Councils*, pp. 39, 42 and 43 respectively.

3. The principal objects contemplated by the present Act are to impart greater efficiency to the Government of India and to the Governments of the Presidencies of Madras and Bombay in the discharge of their executive functions; to prescribe the mode in which the power of making laws and regulations is henceforth to be exercised by the Council of the Governor General; to restore to the Councils of the subordinate Presidencies, at the same time that they are strengthened for the purpose, the power of legislation; to authorise the Governor General in Council, acting under the sanction of the Home Government, to confer upon Lieutenant-Governors of Provinces the power of making laws and regulations (with the aid of persons specially summoned for that purpose) for the Provinces which they respectively govern; and to provide for the temporary Government of India in the event of a vacancy in the office of Governor General. To the most important provisions of the Act bearing on these several matters, I propose to refer more particularly in the sequel of this Despatch.

Principal  
object of  
Statute of  
1861.

4. An important alteration has been made in the constitution of the Executive Council of the Governor General by the adoption of Your Lordship's recommendation that power should be obtained from Parliament for the appointment by the Crown of two members (instead of one), one of whom shall be a Barrister. Steps will be immediately taken for filling up the appointment thus created by the Act.

Section 2.  
Constitution  
of Executive  
Council;  
appointment  
to it of  
Barrister.

5. By the fourth section of the present Act Members of the Council continue to be Ordinary Members of Council under the Act. It is not my intention to deviate from the usual practice respecting the time for which a seat in Council has been held; and, with respect to the Members of the Council who will continue to hold their seats under the present Act, the term of five years will be reckoned from the time when they respectively first took their seats in Council. The question of the salaries of future Members of Council will be considered by me in Council, and the result communicated to your Government.

Section 4.  
Five years'  
tenure of  
appointment  
of ordinary  
Member.

6. Hitherto it has been the practice, on the occasion of the Governor General quitting the Presidency for any other part of India, to pass an Act providing for the exercise by him of executive powers during his absence. By section 6 of the Act now forwarded, resort to legislation in such case is rendered unnecessary, and an order of the Governor General in Council is substituted for an Act of the Legislature.

Section 6.  
Provision for  
absence of  
Governor  
General.

7. The only other provision of the Act relating to the Executive Council of the Governor General to which I

Section 8.  
Power to

make rules  
of executive  
business.

consider it necessary to advert to section 8, which authorizes the Governor General from time to time to make rules and orders for the more convenient transaction of business in his Council. By the arrangement of the business already made by Your Lordship in Council, a remedy has of late years been applied to the cumbrous mode of conducting business which formerly prevailed. The expediency of such arrangements, and of carrying them to such an extent as the Governor General may think desirable for the more convenient despatch of public business, is formally recognized by section 8.

Object of  
rules to be  
made under  
section 8.

8. I need hardly impress upon Your Lordship the necessity of caution in framing the rules and orders so as not to exceed the limit of the discretion conferred upon the Governor General by this section of the Act. The object to be kept in view is the *more convenient transaction of business*. There is nothing in the provision of a nature to detract from the authority or responsibility of the Governor General, or of the Council.

Reduction of  
salary of  
Secretaryship  
to £4,000 per  
annum.

9. I concur with Your Lordship that, after the system of departmental responsibility in the manner proposed shall have come into operation, the salaries of some of the Secretaryships of the Government of India will admit of reduction, and that those which now stand at 5,000*l.* per annum each might, on vacancies, reasonably be reduced to 4,000*l.* per annum.

Legislative  
powers of  
Governor  
General in  
Council.

10. Considerable discussion and interchange of opinion between Her Majesty's Government and Your Lordship in Council has recently taken place in regard to the best mode of conducting the legislation of India, and on this subject the Act contains some very important provisions. The power of legislation, taken away from the Councils of the subordinate Presidencies by the<sup>1</sup> Act of 3rd and 4th Will. 4, c. 85, is, to a great extent, to be restored to them, and new local Legislatures are to be established in other parts of India. The legislative powers conferred on the Government of India by the above-mentioned Act are left unimpaired, but under the present Act are to be exercised, for the most part, in matters of general administration, and such as affect the interest of our Indian Empire at large.

Changes  
effected.

11. I proceed to notice some of the most important provisions by which these changes are to be effected.

Section 10.  
Selection of  
Additional

12. In consequence of the repeal, by section 2 of the present Act, of section 22 of the Act<sup>2</sup> of the 16th and 17th

<sup>1</sup> The Government of India Act, 1833, which has now been repealed (except s. 112) by the Government of India Act, 1915, *ante*.

<sup>2</sup> The Government of India Act, 1853, repealed by *ibid.*

Vict., c. 95, the Legislative Councillors appointed under the repealed enactment will cease to hold office in the Council on the present Act coming into operation. Provision is made by section 10 for the appointment of other additional Members of the Council of the Governor General, who are to be Members only for the purpose of making laws and regulations. They are to be selected by the Governor General from the servants of the Government and from other residents in India, European and Native, from all parts of India, the only limitation on the power of the selection being that not less than one-half of the number nominated are to be persons not holding any office under Government.

Members of  
Governor  
General's  
Legislative  
Council

13. The Imperial Legislature has by this Act provided, for the first time, for the admission of Europeans independent of [the Government and of Natives of India to take part in the important work of legislating for India. I have no doubt this measure will be hailed with satisfaction throughout the country. I entertain as little doubt that Your Lordship will be able to fill up these appointments with persons in every way qualified to give the Government important and valuable assistance in matters that may come before it, and I anticipate that the introduction of intelligent Native gentlemen into the Council will bring to its deliberations a knowledge of the wishes and feelings of the Native population, which cannot fail to improve the laws passed by the Council by adapting them to the wants of the great mass of the population of India.

Introduction  
of non-official  
Members.

14 I am quite aware that there cannot but be considerable difficulty in assembling at any one place, official and non-official persons from distant parts of India, who may bring to the Council of the Governor General the advantage of their knowledge of different parts of the country. The grant of legislative powers to Councils in other parts of India renders it less necessary to have such persons present in Your Lordship's Council, where at present the whole legislation of India is concentrated; but, nevertheless, I think it most desirable that servants of the Government in the other Presidencies, and from the North-West and the Punjab, should be summoned to a body which is to legislate on matters affecting the whole of India, and I shall be glad to find that influential Native gentlemen from distant places have, even at some personal inconvenience to themselves, responded to the call of the head of the Government to take their places in the Council when legislating for the peace and good government of their country.

Desirability  
of appointing  
official serving  
under Local  
Governments  
and influential  
Natives.

15. To enable Your Lordship the more readily to avail yourself of the services of such persons as occasion may require as well as to obviate the necessity for issuing fresh

Additional  
Members to  
be appointed  
by degrees.

summonses simultaneously for the whole number of additional Councillors on the expiration of the term of service of those first appointed, which the immediate nomination of the entire number will impose, I think it expedient that Your Lordship should not summon at once the maximum number of Members allowed by the Act, but appointing part of them at first, should leave the remaining number to be nominated at such times and on such occasions as Your Lordship may think proper.

Section 18.  
Rules for  
conduct of  
legislative  
business.

16. It will be the duty of Your Lordship in Council to make in the first instance, subject to subsequent alteration at meetings for the purpose of making laws and regulations, the rules for the conduct of business at such meetings. The experience of the past has shown, as it appears to me, that an error was committed in adopting numerous rules under the name of "Standing Orders," and thereby imparting to the proceedings of the Council a much more formal character than was contemplated by the Act of 1853. The rules of procedure at meetings for making laws and regulations should be few and simple, and the business should be conducted, agreeably to Your Lordship's suggestion, much in the same way as in a committee or a commission. This is the more indispensable in the Council of the Governor General as well as, in those of the North-West and the Punjab, where Native gentlemen unacquainted with the English language may not improbably be present, and who will be prevented from taking their part in the business of the Council, unless some such arrangement be made.

Mature deli-  
beration and  
discussion of  
laws.

17. No law, except one arising out of some pressing emergency, should be passed without full opportunity for mature deliberation and discussion, and the intervals of discussion should be such as to allow the Members of Council adequate opportunity of reflection and inquiry.

Publicity as  
to legislation.

18. As to the publicity which should attend the proceedings of the Councils at meetings for making laws and regulations, I concur very much in the remarks of Your Lordship in your letter of the 15th January last. In the local Councils of Calcutta, Madras and Bombay, in which it is probable that all the Members, including Natives, will speak the English language, I am not disposed to interfere with the present practice; but it may be necessary to vary the mode of publishing the reports of discussions, as suggested by Your Lordship, in the Council of the Governor General and of the North-West Provinces and the Punjab. Your Lordship has stated, in your Despatch of the 15th January last, the evil which has been caused by the publication of speeches delivered in the Legislative Council and the impression made by them on the Native population. Care should

be taken, by an early publication of the views of the Government, to prevent the public mind being misled, and other means will probably occur to you for meeting this particular difficulty.

19. I think it of the highest importance that correct reports of the proceedings of the several Councils, under the authority of the Council itself, should be sent forth to the public, and I request that you will take into your consideration measures for ensuring this very desirable object.

Publication of authoritative percentage of proceedings.

20. You will transmit to me a copy of the rules as soon as you shall have prepared them.

Copy of rules called for.

21. I entertain a decided opinion that the Councils should not sit permanently for the purpose of making laws and regulations, but should be called together by summons from the head of the Government when projects of law, prepared by the proper officers under the supervision of the Executive Government, are ready for discussion. It is probable that, by adopting this course, Bills will come before the Council better prepared than when hurriedly framed for a Council in session, and will be better considered by the Council when brought before them, and thus much unnecessary legislation will be avoided, and much public time saved. The adoption of this plan, moreover, will be necessary to secure for you the services of Native Gentlemen at a distance, and of those persons whose time, like that of the members of the mercantile communities of the Presidency-towns, is much occupied with their own private engagements.

Legislative Councils not to sit permanently.

22. You will observe that no provision is made for the appointment of a Vice-President at meetings for the purpose of making laws and regulations. In the absence of the Governor General and the President of the Council, the senior Member of the Council will preside.

President, in absence of Governor General.

23 The additional Councillors provided for by the Act are to be called in to assist the Council of the Governor General in matters of legislation. Members of the Council will, of course, exercise their independent judgment in regard to matters brought before them, but the Council at its meeting for making laws and regulations is not to be a body separate and distinct from the Council of the Governor General. Petitions relating to legislative matters should be addressed to the Governor General or Governor or Lieutenant-Governor in Council, as the case may be; and in recording its proceedings, each Council should be designated according to the form followed in the Act, and no other.

Independence of Members of Legislative Councils.



Section 19.  
Non-interference with  
Executive  
Government.

24. I may frankly state to Your Lordship in Council that one object of section 19<sup>1</sup> is to prevent the legislature from interfering with the functions of the Executive Government, and occupying its time with matters which are not directly or immediately connected with the special duties assigned to it. The closing proviso of the section is in accordance with Lord Dalhousie's recommendation to the Council in his Minute of the 17th May, 1854, and numbers 60 and 61 of the Standing Orders. This section renders unnecessary any separate reply to your letters in the Legislative Department, Nos. 6 and 7, dated, respectively, the 14th and 18th of March last.

Sections 20,  
21 and 22.

25. Sections 20, 21 and 22 are re-enactments of former provisions, with such alterations as are rendered necessary by the changes effected by the present Act, and by the transfer of the Government of India from the East India Company to the Crown.

Section 23.  
Ordinances.

26. By section 23 the Governor General of India is vested with a new and extraordinary power of making and promulgating Ordinances in cases of emergency on his own responsibility. It is due to the supreme authority in India, who is responsible for the peace, security and good government of that vast territory, that he should be armed with this power, but it is to be called into action only on urgent occasions, the reasons for a resort to it should always be recorded, and these, together with the Ordinance itself, should be submitted, without loss of time, for the consideration of Her Majesty's Government.

Section 25.  
Laws for non-  
regulation  
provinces.

27. By section 25 doubts are removed as to the validity of rules and regulations which have been passed by any of the Governments in India for the territories known as "non-regulation provinces." You will observe, however, that henceforth legislative measures affecting any of the territories, regulation or non-regulation, under the dominion of Her Majesty at the date of the passing of the Act, must be passed either by the Council of the Governor General, or by that of the Government to which such territories may be subject.

Sections 26  
and 27,  
Provision for  
leave on  
medical  
certificate  
of Ordinary  
Members.

28. It has been found necessary, on some occasions, to grant leave of absence for a short period, on medical certificate, to a Member of the Executive Council, though he was not admitted by law to this privilege. This has now been sanctioned by section 26, and by section 27, the Governor General, or the Governor of a minor Presidency, as the case may be, is authorised, when no provisional appointment has

<sup>1</sup> See now s. 67, Government of India Act, 1915, *ante*, and notes thereunder.

been made from Home, to make a temporary appointment to the office of Councillor either on the occurrence of a vacancy, or when the incumbent may be absent.

29. It is unnecessary for me to enter into any detail as to Sections 28 sections 28 to 41, which, *mutatis mutandis*, contain, in regard to 41. to the Governments of Madras and Bombay, the same provisions as have been enacted in previous corresponding sections in relation to the Supreme Government.

30. By section 42 the power is conferred upon the Governor in Council (constituted as stated in section 29) of each of those Presidencies to make laws and regulations for the territories subject to his authority. Your Lordship will observe, however, that while the power of legislation is, to a great extent thus restored to the minor Presidencies, much greater control over the exercise of that power is given to the Governor General of India than was the case before the passing of the Act 3rd and 4th Will. 4, c. 85. The rules for the conduct of business at meetings of the Councils for making laws and regulations are to be submitted for the sanction of the Governor General in Council,\* and no law or regulation is to have validity until sanctioned by the Governor General.†

Section 42,  
Legislative  
Councils for  
Madras and  
Bombay.

\*Section 37.

†Section 40.

31. It is advisable that the several Legislative Councils should undertake, as far as possible, the necessary legislative business for the territories under their respective jurisdictions. The circumstances of different parts of India are widely different, and may, even under the same general head of administration, require widely different measures of a practical character; and it will be no ground for condemning a measure on any particular subject passed for one Presidency that it differs, in some respects, from another measure on the same subject for another Presidency. There will, however, always remain some important subjects to which, for the most part, general legislation alone is applicable, and which should be reserved to be dealt with by the Council of the Governor General. Such are the subjects specified in section 43 of the Act. If, however, it should appear to the Governor General more expedient that enactments on any of these subjects, so far as regards any Presidency or Lieutenant-Governorship, may be more conveniently passed by the Governor or Lieutenant-Governor in Council, legislation in regard to those subjects by the local Legislature, with the previous sanction of the Governor General, is permitted by the terms of the section.

Division of  
legislative  
measures be-  
tween Impe-  
rial and local  
Legislative  
Councils.

32. There is nothing in the terms of the section, or in General any other part of the Act, which takes away from the powers of the Council of the Governor General the power of legislation Governor General's

Legislative  
Council not  
affected.

in regard to all matters whatsoever connected with any part of Her Majesty's dominions in India, and it is possible that there may be other subjects than those enumerated, which may be considered as properly coming within the cognizance of the highest legislative authority. The division of legislative measures into two classes will not be difficult, and as a general rule, the Supreme Legislature should as little interfere with matters of local administration as a local Legislature should be permitted to interfere with those matters of the general administration which are reserved to be dealt with by the Council of the Governor General.

Sections 44  
to 48.  
Establish-  
ment of local  
Legislative  
Councils in  
the Lower  
Provinces,  
the North-  
West Provin-  
ces and the  
Punjab.

33. By sections 44 to 48, inclusive, the Governor General in Council is empowered to extend the provisions of the Act touching the making of laws and regulations for the Presidencies of Madras and Bombay, to the Bengal Division of the Presidency of Fort William, to the North-West Provinces, the Punjab and to any other Provinces which may hereafter be placed under a Lieutenant-Governor under section 46. Your Lordship in Council will decide upon the number of additional Councillors to be nominated by each Lieutenant-Governor, which in no case should exceed the number allowed by the Act to the Governors of Madras and Bombay.

Local Legis-  
lative Council  
in Lower Pro-  
vinces of  
Bengal to be  
established  
without delay.

34. I gather from communications already received that Your Lordship will deem it expedient to give effect without delay to the provisions of the Act in Bengal, the North-West Provinces and the Punjab. Her Majesty's Government are of opinion that, as regards the Bengal Division of the Presidency of Fort William, the change should be introduced with as little delay as possible: and I leave it to Your Lordship to determine at what time you will take the same course as regards the North-West Provinces and the Punjab.

Immediate  
measures to  
be taken first  
in connection  
with Impe-  
rial, Madras  
and Bombay  
Legislative  
Councils.

35. With reference to the foregoing remarks, I have now to request that Your Lordship in Council will take immediate measures for placing the Council of the Governor General for making laws and regulations on the footing prescribed by the Act, and enter into communication with the Governments of Madras and Bombay respecting the adoption of the necessary measures for bringing the Act into operation in those Presidencies. When your measures shall be sufficiently matured to admit of practical effect being given to the provisions of the Act in your own Council and in the Councils of the Governors of Madras and Bombay, you will announce the same by proclamation in the official Gazettes of the several Presidencies, until which time the power of making laws and regulations will, under section 16 of the Act, continue to be exercised by the

Council of the Governor General as constituted by the 'Act of the 16th and 17th Vict., c. 95.

36. You will then take the necessary steps for extending such of its provisions as relate to the making of laws and regulations in the Presidencies of Madras and Bombay, to the Bengal Division of the Presidency of Fort William. It will be seen from section 49 that the proclamation by the Governor General in Council for constituting any Council for the purpose of making laws and regulations must be transmitted to the Secretary of State for the previous sanction of the Crown. To this provision you will carefully adhere, forwarding the proclamation relating to the Bengal Division with as little delay as possible, and those relating to the North-West Provinces and the Punjab either with it, or at such future periods as Your Lordship in Council may deem expedient. Bengal Council next to be established.

37. With regard to section 50, it is only necessary to observe that, when no provisional successor to the office of Governor General shall be in India, any vacancy occurring in that office will, until the arrival of a successor appointed by Her Majesty, be supplied by one of the highest functionaries in India holding office under the immediate appointment of the Crown, and until he assumes the function of Governor General the Government will be administered, as heretofore, by the Senior Ordinary Member of Council, as would be done under the provisions of the<sup>2</sup> 3rd and 4th Will. 4, c. 85, section 62, if no provisional successor were on the spot. Section 50. General.

38. Of the projects of law now under consideration I am very anxious that the Code of Criminal Procedure should be passed before the present Act comes into operation. Of the rest, some have got to that stage which renders it advisable that they should be enacted by the Legislature as at present constituted, while others, especially those of a local character, may be withdrawn, and re-introduced, if necessary, into the Councils to which, under the new system, they will respectively belong. Pending legislation.

39. Your Lordship in Council will impress upon the subordinate Governments the necessity of keeping the establishments required for conducting the legislative business of the Councils at as low a point as is consistent with efficiency. economy in establishments.

40. It only remains for me, in conclusion, to express the great gratification I feel in being permitted to avail Conclusion.

<sup>1</sup> The Government of India Act, 1853, now repealed by the Government of India Act, 1915, *ante*.

<sup>2</sup> The Government of India Act, 1833, now repealed; (except s. 112) the Government of India Act, 1915, *ante*.

myself of Your Lordship's assistance in giving effect, before you quit India, to the intentions of the Imperial Legislature. I look with great confidence to the advantage which will be derived from the commencement of the new system under Your Lordship's directions. Your Lordship's experience in India, and the attention which you have given to this most important subject, render Your Lordship most eminently fitted to give effect to the measures introduced by the Act for the government and legislation of India; and the successful accomplishment of this may be the last, though it will not be the least, of the services which you will have rendered to your Sovereign in that country.

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## APPENDIX III.

DESPATCH FROM THE SECRETARY OF STATE REGARDING THE  
INDIAN COUNCILS ACT, 1892.<sup>1</sup>

No. 15 of 1892.

From

The RIGHT HON'BLE VISCOUNT CROSS,  
Her Majesty's Secretary of State for India.  
*India Office, London, the 30th June, 1892.*

MY LORD MARQUIS,

I forward herewith a copy of the Act<sup>1</sup> recently passed by Parliament to amend the Statute under which the meetings of the several Councils in India assembled for the purpose of making Laws and Regulations have been held since 1861.

2. That Statute imported into the legislative constitution of British India, as a recognized principle of public policy, provisions for the admission into all the Councils, when assembled for the purpose of making laws, of Additional Members, Native and European, a certain proportion of whom must be unconnected officially with the executive Governments, and who would take an independent and responsible share in the legislation of the country. The anticipations upon which this important step was taken in 1861 have, during the past thirty years, been amply fulfilled. There can be no doubt that the Governor General's Council has been relieved of much business which the local Councils, which were then finally established, have proved themselves thoroughly competent to undertake; while the whole legislative system of India has benefited from the presence in the Councils of the Additional Members who have brought much ability, experience and special knowledge to bear upon the discharge of their duties.

Success of  
Statute of  
1861.

3. Upon these considerations, and having regard to the progress of administration in recent years, to the material and moral improvement of the country generally and to the expediency of strengthening the Councils and extending their functions in some proportion with the growing attention in India to public affairs, Her Majesty's Government, after considering the recommendations of Your Excellency and of Your Excellency's predecessor, have

Extension of  
functions of  
Legislative  
Councils,  
desirable.

<sup>1</sup>The Indian Councils Act, 1892, is printed in App. I, *ante*. It has been repealed and re-enacted by the Government of India Act, 1915. *ante*.

induced Parliament to resolve that the Councils may with advantage be enlarged. It has been determined, moreover, upon the same grounds, to relax in some degree those provisions of the original Act which confine the proceedings of the Councils to the discussion and enactment of Bills introduced at their meetings. Accordingly, in the Act, which has just become law, certain amendments have been made upon which it is right that I should take this opportunity of recording some observations.

Section 1.  
Provision for  
increase in  
number of  
Additional  
Members.

4. It is provided, in the first place, that the Additional Members to be summoned by the Governor General to his Council (and by the Governors of Madras and Bombay to the Councils of those Presidencies), when met for the purpose of making laws and regulations, may be augmented up to a limit fixed in the Act. The Governor General is also empowered to make a considerable increase of the number of the Members who may be summoned for the same purpose by the Lieutenant-Governors of Bengal and of the North-West Provinces. Your Excellency will notice that while these Members are to be nominated, as heretofore, by the Governor General, the Governors and the Lieutenant-Governors, respectively, the Governor General in Council is now authorized, with the approval of the Secretary of State, to make regulations as to the conditions under which such nominations shall be made, and to prescribe the manner in which the regulations shall be carried into effect.

Section 2.  
Provision for  
discussion of  
Annual  
Financial  
Statement  
and asking of  
questions.

5. In the second place, the Governor General in Council is invested with power to make rules from time to time authorizing the discussion of the Annual Financial Statement, and the asking of questions under such conditions as shall be in the said rules prescribed. The Act also contains similar provisions in regard to the Councils of the Governors and Lieutenant-Governors.

General  
instructions.

6. I have no doubt that Your Excellency in Council and the several Local Governments will lose no time and spare no pains in considering and preparing the rules necessary for carrying into operation these important provisions, which have been introduced with the avowed objects of bringing the Legislatures into closer relation with the best representatives of public opinion in India, and of multiplying the opportunities for an interchange of views and information between the Governments and their Councils. I need hardly add that the ultimate nominating authority still rests with those to whom it was entrusted by the Statute of 1861,<sup>1</sup> or that the responsibility attaching to the careful exercise of

<sup>1</sup> The Indian Councils Act, 1861, printed in App. I, *ante*.

this authority by no means diminishes, as the number of the non-official Members is increased, and as the scope of their attributes is enlarged. It appears to me probable, nevertheless, that the diffusion in the more advanced provinces of education and enlightened public spirit, and the recent organization of local-self government, may have provided in some instances ways and means of which the Governments may properly avail themselves in determining the character that shall be given to the representation of the views of different races, classes and localities. Where corporations have been established with definite powers, upon a recognized administrative basis, or where associations have been formed upon a substantial community of legitimate interests, professional, commercial or territorial, Your Excellency and the Local Governors may find convenience and advantage in consulting from time to time such bodies, and in entertaining at your discretion an expression of their views and recommendations with regard to the selection of Members in whose qualifications they may be disposed to confide. It is in full reliance upon the benefits to be expected from enlisting the support and co-operation of competent Members, and from a more extensive devolution upon the Provincial Councils of the legislative business that particularly concerns the population with whose needs and circumstances these Councils should be specially conversant, that I recommend this Statute to the very careful attention of Your Excellency's Government, and of the other Governments in India whose duty it will be to give effect to its provisions.

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## APPENDIX IV.

EXTRACT FROM A CONFIDENTIAL DESPATCH, NO. 193-PUBLIC,  
DATED THE 27TH NOVEMBER 1908, FROM THE SECRETARY OF STATE (LORD MORLEY).<sup>1</sup>

[N.B.—*The proposals discussed in this Despatch led to the passing of the Indian Councils Act, 1909 (9 Edw. 7, Cap. 4), printed in App. I, ante.*]

I have to acknowledge the important Despatch of the 1st October 1908, in which I find submitted for approval and decision a group of constitutional reforms, framed by Your Excellency in Council in pursuance of a policy initiated more than two years ago. Your proposals, in their present shape, are the outcome of a tentative project placed in August last year in the hands of Local Governments in India, with instructions to consult important bodies and individuals representative of various classes of the community, before putting their own conclusions before the Government of India.

\* \* \* \* \*

Enlargement  
of Legislative  
Councils.

5. \* \* \* I pass to what is, and what you declare to be, the pith and substance of the despatch under reply. "The enlargement of the Legislative Councils," you say, "and the extension of their functions to the discussion of administrative questions, are the widest, most deep-reaching, and most substantial features of the scheme which we now put forward." This perfectly correct description evokes and justifies the close scrutiny to which these features have been subjected in my Council, and I am glad to believe that the result reveals few elements of material difference.

\* \* \* \* \*

Principle of  
representation  
in Legislative  
Councils.

8. The first question that arises touches the principle of representation. \* \* \* Citing previous discussions of the subject, and referring to the precedent of the measures taken to give effect to the Statute of 1892, you adhere to the opinion that in the circumstances of India "representation by classes and interests is the only practicable method of embodying the elective principle in the constitution of the Indian Legislative Councils" (paragraph 18). You justly observe that "the principle to be borne in mind is that election by the wishes of the people is the ultimate object to be secured, whatever may be the actual machinery adopted for giving effect to it" (paragraph 29). You consider that for certain limited

<sup>1</sup> For the whole Despatch see Home Dep. Pub. A., Feb. 1909, Nos. 205 244.

interests (the Corporations of Presidency-towns, Universities, Chambers of Commerce, Planting Communities, and the like) limited electorates must exist as at present; and you foresee no serious obstacle in carrying out arrangements for that purpose. Difficulties come into view when you go beyond these limited electorates, and have to deal with large and widespread interests or communities, such as the land-holding and professional classes; or with important minorities, such as Muhammadans in most provinces in India, and Sikhs in the Punjab. You dwell upon the great variety of conditions in the various provinces of the Indian Empire and the impossibility of applying any uniform system throughout; and your conclusion generally appears to be that class electorates should be framed where this is practicable and likely to lead to good results, and in their failure or defect it will be necessary to have recourse to nomination.

9. With the general principles advanced by Your Excellency in this chapter of our discussion, I am in entire accord. I agree that, to some extent, class representation must be maintained in the limited electorates to which you refer; and here, as you point out, no serious obstacle is to be anticipated. I agree, also, that the Legislative Councils should reflect the leading elements of the population at large, and that no system of representation would be satisfactory, if it did not provide for the presence in the Councils of sufficient representatives of communities so important as are the Muhammadans and the landed classes. But in examining your plans for obtaining their representation, I am struck with the difficulty of securing satisfactory electoral bodies under them, and, with the extent to which, as you expect, nomination will be demanded to supply the deficiencies of election. The same awkwardness and perplexity appear in obtaining satisfactory representation of the Indian commercial classes, where, as is found generally throughout India with very few exceptions, they have not established Associations or Chambers to represent their interests.

10. The case of landholders is discussed in paragraphs 27 to 29 of your letter, with immediate reference to the Imperial Legislative Council, and the situation is just the same—it separate representation is to be secured—for local councils. You “find it impossible to make any definite proposal which would admit of general application” (paragraph 27); you see difficulties in devising a constituency that should consist only of landholders deriving a certain income from land (paragraph 28); and you point out with much force the objections to election by voluntary associations. In these observations I agree, and especially in your

remark that the regulation of associations as electoral agencies should be regarded as a provisional arrangement, to be maintained only until some regular electorate can be formed.

Special  
Muhammadan  
electorate.

11. The same difficulties, as you observe in paragraph 30, encounter the proposal to have a special electorate for Muhammadans. In some provinces, as in Bombay, the Muhammadans are so scattered, that common organisation for electoral purposes is thought impracticable. In other provinces it is proposed to found a scheme partly on a property qualification and partly on literary attainments. In others, again, it is suggested that recourse might be had to voluntary associations. One difficulty in regard to Muhammadans is not mentioned in your letter; for the provision in any province of a special electorate giving them a definite proportion of the seats on the Councils might involve the refusal to them in that province of a right to vote in the territorial electorates of which rural and Municipal Boards will afford the basis. If that were not done, they would evidently have a double vote, and this would probably be resented by other classes of the population.

\* \* \* \* \*

Representa-  
tion of Indian  
Mercantile  
Community.

15. The due representation of the Indian mercantile community, on which you touch in paragraph 31 of your letter, might be included in the scheme, if the commercial classes fail to organise themselves, as you suggest that they may arrange to do, in associations similar to the European Chamber of Commerce.

\* \* \* \* \*

Question of  
maintaining  
official major-  
ity in Legis-  
lative Coun-  
cils.

17. From the electoral structure, I now turn to the official element in the constitution of Provincial Legislative Councils, dealt with in paragraphs 33 to 56 of your letter. I first observe that in all of them you provide for a bare official majority, but you contemplate that in ordinary circumstances only the number of official members necessary for the transaction of business shall be summoned to attend. The first question, therefore, is the necessity of maintaining in these Councils the majority of officials.

Official major-  
ity to be  
dispensed  
with an Pro-  
vincial  
Councils, but  
maintained in  
Imperial  
Council.

18. We have before us, to begin with, the leading fact that in the important Province of Bombay there is in the Council, as at present composed, no official majority, and that the Bombay Government, even in the smaller of its alternative schemes presented to Your Excellency in Council, is willing to dispense with such a majority. Considering the character of the legislation ordinarily coming before a Provincial Council, is it not possible, with due representation given to the various classes and interests in the community,

to do without a majority of officials? After careful consideration, I have come to the conclusion that in Provincial Councils such a majority may be dispensed with, provided that a substantial official majority is permanently maintained in the Imperial Legislative Council.

19. I do not conceal from myself the risks in such an arrangement. The non-official majority may press legislation of a character disapproved by the executive Government. This should be met by the exercise of the power to withhold assent, possessed by the head of the Government. Then, although the Local Legislature is vested with power to make laws for the peace and good government of the territories constituting the province, still the range of subjects is considerably narrowed by the statutory exclusions now in force.

Risks and advantages of dispensing with official majority.

\* \* \* \* \*

It is difficult to see how any measure of such urgency, that delay might work serious mischief, can come before a Provincial Council; for mere opposition to a useful and beneficial project would not come within this description. On the other hand, and perhaps more often, there may be opposition on the part of the non-official members to legislation that the Government desires. With a Council, however, representing divergent interests, and realising together with its increased powers its greater responsibility, a combination of all the non-official members to resist a measure proposed by the Government would be unlikely, and some non-officials at least would probably cast their votes on the side of the Government. If, however, a combination of all the non-official members against the Government were to occur, that might be a very good reason for thinking that the proposed measure was really open to objection and should not be proceeded with.

20. \* \* \* \* \*  
\* \* \* \* \* If, in spite of such hostile vote the comparatively rare case should arise where immediate legislation were still thought absolutely necessary, then the constitution as it at present stands provides an adequate remedy. The Governor General in Council to-day possesses a concurrent power to legislate for any province, and though I strongly favour a policy that would leave to each Local Legislature the duty of providing for its own requirement, still I recognize in this power an ample safeguard, should under exceptional circumstances a real demand for its exercise arise.

Concurrent power of legislation vested in Governor General in Council, a sufficient safeguard.

\* \* \* \* \*

22. Your proposals in relation to the Imperial Legislative Council are necessarily entitled to the greatest weight. I am glad to find myself able to accept them practically in their

Substantial official majority in Imperial

Legislative  
Council.

entirety. While I desire to liberalize as far as possible the Provincial Councils, I recognise that it is an essential condition of this policy that the Imperial supremacy shall be in no degree compromised. I must therefore regard it as essential that Your Excellency's Council in its legislative, as well as its executive, character should continue to be so constituted, as to ensure its constant and uninterrupted power to fulfil the constitutional obligations that it owes, and must always owe, to His Majesty's Government and to the Imperial Parliament.

\* \* \* \* \*

To secure the required relations I am convinced that a permanent official majority in the Imperial Legislative Council is absolutely necessary, and this must outweigh the grave disadvantages that induce us to dispense with it in the Provincial Legislatures. It need not be in any sense an overwhelming majority, and this Your Excellency does not seek; but it must be substantial, as it is certainly desirable that the Governor General should be removed from the conflict of the division list, and that the fate of any measure or resolution should not rest on his vote alone.

\* \* \* \* \*

Representa-  
tion of  
minorities and  
appointment  
of experts.

26. Your plan for securing occasional representation for the interest of minorities such as the Sikhs, the Parsis, the Indian Christians, the Buddhists, and the Domiciled Community, meets with my entire approval, and I am in complete sympathy with your intention sometimes to appoint one or two experts in connection with legislation pending before Council.

\* \* \* \* \*

Relaxation of  
restriction on  
discussions in  
Legislative  
Councils.

28. The existing law, which confines discussion, except on the occasion of the Annual Financial Statement, to legislative proposals actually before the Council, imposes a restriction, that I am convinced is no longer either desirable or necessary. The plan of Your Excellency's Government contemplates a wide relaxation of this restriction, and, in sanctioning it generally, I am confident that these increased facilities judiciously used will be pronounced of the greatest advantage, not only by Councils and those whom they represent, but also by Government, who will gain additional opportunities both of becoming acquainted with the drift of public opinion, and of explaining their own actions.

Discussion of  
Resolutions.

29. Taking the proposals in detail, I agree that Resolutions to be moved should take the form of recommendations to Government, having only such force and effect as Government after consideration shall deem due to them. The introduction and discussion of Resolutions should not extend to subjects removed from the cognisance of the Legislative

Councils by Statute, and must obviously be subject to rules and restrictions. \* \* \* \* \*

I must, however, remark upon the first of the suggested conditions, that isolated incidents of administrations, or personal questions, may be, and often are, at the same time matters of public and general importance. It would, in my opinion, be sufficient to lay down that Resolutions must relate to matters of public and general importance, inasmuch as the President of the Council will have the power of deciding finally whether any proposed Resolution does or does not satisfy this condition.

30. In respect of rules on the asking of Questions, I have come to the conclusion that, subject to such restrictions as may be found requisite in practice, and to the existing general powers of the President, the asking of supplementary questions should be allowed. Without these, a system of formal questions met by formal replies must inevitably tend to become unreal and ineffective, and, in an assembly in which under proper safeguards, free discussion and debate is permitted and encouraged, there can be no sufficient reason for prohibiting that method of eliciting information and expressing indirectly the opinions and wishes of the questioners. Asking of Questions and supplementary questions.

\* \* \* \* \*

38. Your Excellency anticipates longer sittings of the Legislative Council, with increased activity of discussion, and the effectual representation of provincial opinion and feeling, as a guide to executive authority, is the central object of the policy of Your Excellency's despatch. The aim of that policy is two-fold ; at once to enable Government the better to realise the wants, interests, and sentiment of the governed, and, on the other hand, to give the governed a better chance of understanding, as occasion arises, the case for the Government, against the misrepresentations of ignorance and malice. That double object, as Your Excellency fully appreciates, is the foundation of the whole system in India, and all over the world, of administration and legislation either through, or subject to, the criticism of deliberative bodies whether great or small. Conclusion.

\* \* \* \* \*

## APPENDIX V.

ROYAL WARRANT APPOINTING HIS EXCELLENCY LORD  
CHELMSFORD TO BE GOVERNOR GENERAL OF INDIA.

GEORGE V BY THE GRACE OF GOD of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India.

To Our Right Trusty and Well Beloved Councillor Frederick John Napier, Baron Chelmsford, of Chelmsford, Knight Grand Cross of the Most Distinguished Order of St. Michael and St. George,

## GREETING.

WHEREAS by the Government of India Act, 1915<sup>1</sup> it is enacted that the Governor General of India is appointed by Us by Warrant under Our Royal Sign Manual.

Now KNOW that We reposing especial trust and confidence in the Fidelity, Prudence, Justice and Circumspection of you the said Frederick John Napier, Baron Chelmsford Have nominated made constituted and appointed you the said Frederick John Napier, Baron Chelmsford, to be Governor General of India and of All and singular Our Ports, Factories, Settlements, Lands, Territories, Countries, Places and Provinces which now are or shall from time to time be subject to or under Our Government in the East Indies And to execute all and every the powers or authorities committed continued or given to Our Governor General of India by or under or in virtue of the Government of India Act, 1915<sup>1</sup>, and by or under or in virtue of any other Act or Acts of Parliament now in force to take upon you hold and enjoy the said Office upon and from the death resignation or coming away of Charles, Baron Hardinge, Governor General of India, whichever of those events shall first happen and to continue in the exercise of the said Office during Our will and pleasure subject nevertheless to such Instructions and Directions as you the said Frederick John Napier, Baron Chelmsford shall as Governor General of India or as Governor General of India in Council from time to time receive under the hand of One of Our Principal Secretaries of State.

AND We do hereby authorise and empower and require you the said Frederick John Napier, Baron Chelmsford to

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<sup>1</sup> Printed *ante*.

execute and perform all and every the powers and authorities to the said Office of Governor General of India appertaining.

AND IN PARTICULAR We do hereby authorize and empower you in Our name and on Our behalf to grant to any offender convicted in the exercise of its criminal jurisdiction by any Court of Justice within Our said Territories a Pardon either free or subject to such lawful conditions as to you may seem fit.

AND We do hereby give and grant unto you the said Frederick John Napier, Baron Chelmsford, Our said Governor General of India and your Council as the Governor General of India in Council the superintendence direction and control of the whole Civil and Military Government of all Our said Territories and Revenues in India with full power and authority to superintend and control the Governors and Governors in Council respectively of all our Presidencies in the East Indies in all points relating to the due administration of such Presidencies, respectively, and also with all such powers and authorities jointly severally and respectively and subject to all such restrictions and conditions as are given to them respectively or created by or under or in virtue of the Government of India Act, 1915, or any other Act or Acts of Parliament now in force.

AND We do hereby Order and require all Our servants officers and soldiers in the East Indies and all the people and inhabitants of the Territories under Our Government and also all Our Governors and Councils of Our respective Presidencies in the East Indies to conform, submit and yield due obedience unto you the said Frederick John Napier, Baron Chelmsford, Our said Governor General of India and your said Council accordingly.

GIVEN at Our Court at St. James' the third day of March in the year of our Lord One thousand nine hundred and sixteen and in the Sixth year of Our Reign.

By His Majesty's Command  
AUSTEN CHAMBERLAIN.

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## APPENDIX VI.

DESPATCH FROM THE SECRETARY OF STATE REGARDING PENAL  
CLAUSES IN THE BILLS OF LOCAL COUNCILS.

No. 35 of 1862.

From

The RIGHT HON'BLE SIR CHARLES WOOD,<sup>1</sup> BART.,  
G.C.B.,

Her Majesty's Secretary of State for India.

*India Office, London, the 1st December, 1862.*

MY LORD,

Your letters Nos. 16, 17 and 18, dated 5th September

By the Council of the Governor of Madras.

1st "An Act to make better provision for the management of boats and catamarans in the Madras roads.

2nd—To prevent damage to the pier, to regulate the traffic and to provide for levying of tolls upon the same."

By the Council of the Governor of Bombay—

"An Act for the establishment and regulation of Reformatory Schools for Juvenile Offenders."

1862, having been considered by

me in Council, I have to express my approval of Your Lordship

having withheld, for the reasons stated in your minutes of the 25th July and the 13th August

last, your assent to the Acts noted in the margin.

Local legislation constituting new offences.

2. Cases no doubt will occasionally occur when special legislation by the Local Governments for offences not included in the Penal Code will be required. In these cases the general rule should be to place such offences under penalties already assigned in the Code to acts of a similar character. This mode of legislation, though an addition to, cannot be deemed an alteration of, the Penal Code; but if any deviation is considered necessary, then the law requires that your previous sanction should be obtained.

Indian Penal Code intended to be exhaustive.

3. It was the intention of Her Majesty's Government that, except in local and peculiar circumstances, the Code should contain the whole body of penal legislation, and that all additions or modifications suggested by experience should, from time to time, be incorporated in it, and the duty of

<sup>1</sup>Afterwards Viscount Halifax.

maintaining this uniformity of course devolves upon Your Excellency in Council.

4. As a general rule for the guidance of the local Councils, it would probably be expedient—and this appears also to be your own view—that all Bills containing penal clauses should be submitted for your previous sanction.

Penal clauses  
in local  
Councils Bills  
to be  
submitted  
for previous  
sanction of  
Governme t  
of India.

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With this letter should be read Sir H. S. Maine's Minutes, Nos. 6 and 7, in which the question what is meant by "altering in any way" the Penal Code is discussed. Sir Henry Maine admitted that "it was difficult to contend that by constructive alterations one did not alter *in some way* the Penal Code"; but he concluded in favour of the argument to the contrary, although that argument was derived entirely from the inconvenience—and, judged by its consequences, the unreasonableness—of the affirmative construction. He further pointed out that the Bills falling under each of the different heads (except the fourth) specified in s. 43 of the Indian Councils Act, 1861—*ante* had a distinct common character. "But, if the fourth prohibition covers constructive alterations of the Code, the Bills to which it applies are altogether miscellaneous and include nearly all the measures which would naturally be brought before a local Legislature."

In the result, it has always been understood that previous sanction to the penal clauses in a Bill of a local legislature not directly altering the Indian Penal Code is *not* required by the Statute of 1861; that it is required only as a matter of expediency in accordance with the views expressed in the despatch above; and that it is the previous sanction of the *Governor General in Council*, i.e., of the Government of India in the Home Department, and not that of the *Governor General* personally, that should be applied for and accorded in this connection. See Legislative Department's A. Pros., November, 1898, Nos. 17-41, and r. 3(1) of the *Instructions to Local Governments regarding Legislation, ante*, and the supplementary note at the end of the *Instructions*.

See in this connection section 79(3) (d) of the Government of India Act, 1915, *ante*, and notes thereunder.

## APPENDIX VII.

## CORRESPONDENCE REGARDING LEGISLATION AT SIMLA.

*Extract from Despatch No. 14 (Public), dated the 20th January, 1887, from the Secretary of State (Lord Cross).*

"7. In a further despatch of the 20th December, 1877, Legislative, No. 68, the Marquis of Salisbury reverted to the same important subject, saying,—‘Any method of transacting legislative business which, in respect of place or time, unnecessarily discourages or prevents the attendance of these (the non-official Additional) Members must be condemned as defeating the plain intention of the Imperial Legislature. But, under the present practice of the Government of India, there is only one place at which, and only one period of the year during which, the systematic attendance of Additional Members can be secured. As a rule, the mercantile gentlemen summoned to your Council can attend it at Calcutta alone; and since the extension of railways, Calcutta is probably, on the whole, the place at which it is most convenient for Native gentlemen of rank to assist in your deliberations. \* \* \* Under these circumstances, I am of opinion that Your Excellency will best give effect to the important Statute from which so large a portion of your power is derived, by making such arrangements as will admit of your Executive Government being, as a rule, represented at Calcutta during the whole period between the 1st day of November and the 15th day of April.’"

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*Extract from despatch of Lord Dufferin's Government to the Secretary of State, No. 16, dated the 15th March, 1887.*

"25. \* \* \* \* Your Lordship emphasizes Lord Salisbury's opinion that our Legislative Council should not, as a rule, assemble at Simla for the purpose of making laws of general application, save in cases of emergency. In this view we entirely concur, and we believe that the summary of work performed under the Indian Councils Act, which is appended to this despatch, will serve to show that we have made every endeavour to carry Lord Salisbury's views on this point into practice. Laws which apply to the Punjab, however, may with advantage be passed at Simla or some other convenient local centre: and, in furtherance of this policy, we intend to hold a legislative session at Delhi or elsewhere in the Punjab in the autumn of this year to pass through Council two important Bills relating to that Province. We otherwise advocate the principle that Simla should be the place for preparing measures, and Calcutta for passing them into law, when no clear advantage is to be gained by passing

them at a Council held in the Province to which the measures relate. But for these purposes a three months' session in Calcutta is ordinarily sufficient, regard being had to the fact that the great Codes have all been passed, that there are local Legislative Councils at Madras, Bombay, Calcutta and Allahabad, and that the legislative work in our Council for the next few years, at all events, is likely to consist rather in introducing judicious amendments in existing Statutes than in originating great projects of law."

*The five classes of legislative business which alone, except in cases of great urgency, ought to be taken up in Simla were thus summarised in paragraph 18 of this despatch :—*

- (1) the passing of purely local laws ;
- (2) the gaining of a stage in important measures when discussion in Council is not immediately required ;
- (3) the passing of Bills which, having been settled after full discussion in Calcutta, are passed without any alteration in substance ;
- (4) the passing of petty measures which could neither excite nor be improved by discussion ; and
- (5) the passing of Consolidation Bill and Bills repealing obsolete enactments.

*Approval of these views was finally expressed in paragraph 7 of the despatch from the Secretary of State (Lord Cross), No. 116 (Public), dated the 25th October, 1888,—see Home Department's Proceedings (Public), April, 1887, Nos. 113 to 129, and February, 1889, Nos. 214 to 218.*

*Extract from Despatch of Lord Chelmsford's Government to the Secretary of State, No. 5, dated the 8th June, 1917.*

\* \* \* \* \*

"2. The nature of the legislative business transacted during the Simla Session of the Council has hitherto been regulated in accordance with these principles,<sup>1</sup> and although the orders to which we have referred relate in terms to legislation proper, which at the time when they were passed was the only subject within the competence of the Council, the same principle—that the business of the Council should be confined, at its Simla Sessions, to unimportant and non-controversial matters—has been applied in practice to the new power, which was granted to Additional Members in 1909, of initiating, by means of Resolutions, the discussion in the Legislative Council of matters of general public interest. \*

\* \* \* \* \*

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<sup>1</sup>The principles here referred to are those laid down in the despatch of the 15th March, 1887, summarised above.

5. But our recommendation is not based solely on the advantages which would result from an increased latitude in permitting the moving of Resolutions. The existing restrictions upon legislative business at Simla have the effect of crowding into the session at Delhi the bulk of our legislative programme for the year, with the result that the pressure upon the official members during the months in which the Council meets there is of so heavy a nature as to threaten to dislocate our ordinary executive business. Nor can we anticipate that this pressure will be appreciably relieved by merely opening the Simla Session to the moving of Resolutions, as it is unlikely that with this increase of facilities the total number of Resolutions moved in a year will remain stationary; on the contrary, advantage is likely to be taken of this privilege to an increasing extent as time advances, a fact which in itself lends support to our contention that it is impossible to maintain the existing restrictions. We are of opinion that as matters stand it is essential that we should be in a position to afford some relief from the increasing pressure of work in Delhi by making a more even distribution of legislative work between the Simla and Delhi sessions. And this necessity will become the more urgent when the war comes to an end. Since war broke out we have, as you are aware, confined our legislative measures, other than those directly necessitated by the war, to non-controversial subjects, with the result that there is a large accumulation of pending legislative work before us. It will be impossible for us to dispose of this accumulation if the business connected with it has to be transacted entirely or in the main during the Delhi session.

\* \* \* \* \*

7. We have accordingly, after full consideration of all the circumstances, decided provisionally to permit the discussion of Resolutions during the ensuing September session in Simla, and we would request that a similar discretion may be given us in the matter of legislative measures, and that we may now be authorised to take up in Simla, in addition to measures of the class specified in paragraph 1 above, such other measures as we may consider can expediently be put forward without detriment to the various interests concerned."

*Acceptance of these proposals as an experimental measure during the 1917 Simla Session was conveyed by the Secretary of State in his telegram dated 22nd August, 1917. Vide L. D. Pro.*

*It was decided to allow Resolutions also during the 1918 Simla Session.*

## APPENDIX VIII.

COMMUNICATIONS TO THE SECRETARY OF STATE ON THE SUBJECT  
OF THE INSTRUCTIONS TO LOCAL GOVERNMENTS REGARDING  
LEGISLATION IN LOCAL COUNCILS.<sup>1</sup>

Despatch No. 22 of 1898.

To

THE RIGHT HON'BLE LORD GEORGE F. HAMILTON  
Her Majesty's Secretary of State for India.*Simla, the 1st September, 1898.*

MY LORD,

IN Your Lordship's despatch No. 33 (Legislative), dated the 22nd October, 1896, certain observations were made regarding delays on our part in dealing with proposals for legislation in local Councils, and we were asked to issue orders laying down a limit of time within which any intimation by us of doubt or disapproval should be made, the Local Government concerned being entitled, on the expiration of that period without any intimation being received to assume that their measure is approved.

2. We have given this question our careful consideration, and the conclusion at which we have arrived is that we ought to bind ourselves to intimate, within the interval of two months which is allowed to Your Lordship in the same connection, any objections entertained by us to the introduction of a proposed Bill in a subordinate Council, and that, if no communication is received before that limit is passed, it may be assumed by Local Governments that we, as well as Your Lordship, have no present intention of interfering. Where the law requires the previous sanction of the Governor General, it is clear that no such assumption can lawfully be made; but we think that, in cases in which the Government of India are asked to approve of the penal clauses of a Bill, as suggested in Sir Charles Wood's despatch No. 35 (Legislative), dated the 1st December, 1862,<sup>2</sup> we may promise a reply within the shorter period of one month and that Local Governments may take it that penal clauses are sanctioned, if not disallowed within that period.

Interval to  
be allowed to  
Government  
of India for  
consideration  
of Bills of  
local  
Councils.

<sup>1</sup> The Instructions as revised up to date and re-issued are printed *ante*.

<sup>2</sup> See *Selection of Papers relating to the Constitution and Functions of the Indian Legislative Councils*, p. 216, and App. VI, *ante*.

Revision of  
instructions  
on the  
subject.

3. We propose, therefore, to issue orders on these lines and in framing them we have taken the opportunity to re-cast and subject to general revision the existing *Instructions to Local Governments*, which were drawn up in 1888 and were forwarded to the India Office with our despatch No. 22, dated the 25th August of that year. These *Instructions* have proved unsatisfactory in practice, as they involve a somewhat complicated procedure under which different Departments of the Government of India have to be addressed at different stages in connection with the introduction in, and the passing of a Bill through, a local Council. A copy of the new *Instructions*,<sup>1</sup> which we intend, if Your Lordship raises no objection,<sup>2</sup> to issue on the 1st October next, is forwarded herewith. It will be observed that they will allow considerable latitude to Local Governments in the matter of proceeding with legislation; but we believe that there is nothing in them contrary to the spirit of the orders contained in Lord Salisbury's despatch No. 9 (Legislative), dated the 31st March, 1874,<sup>3</sup> and in any case we think that, in these days of enlarged and more representative Councils, it is desirable to give a large measure of discretion to Local Governments, trusting to their knowledge of the Governor General's power of withholding his assent and Her Majesty's power of disallowance to prevent such discretion being abused.

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LETTER No. 101, DATED 29TH MAY, 1913.

FROM

THE HON'BLE SIR W. H. VINCENT,  
 KT., I.C. S.,  
*Secretary to the Government of India,*  
*Legislative Department,*

TO

THE PERMANENT UNDER SECRETARY  
 OF STATE FOR INDIA.

I am directed to forward, for the information of His Majesty's Secretary of State for India, a copy of the revised Instructions regarding legislation in Local Councils, which have been issued to the Local Governments having Legislative Councils.

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<sup>1</sup> See *ante*.

<sup>2</sup> No objection was raised, and approval was definitely expressed by the Secretary of State (Lord George Hamilton) in his despatch No. 32 (Legislative), dated the 20th October, 1898.

See *Selection of Papers relating to the Constitution and Functions of the Indian Legislative Councils*, p. 180.

2. The Instructions issued in 1898, of which a copy was forwarded to His Majesty's Secretary of State for India with Government of India despatch No. 22, Legislative, dated 1st September, 1898, have been amended, so as to extend to the Governor of Bengal in Council the privilege of direct correspondence with His Majesty's Secretary of State for India, and the opportunity has been taken to include, as sub-rule (4) of rule 3, the Instruction issued in 1897 in accordance with the suggestion contained in Lord George Hamilton's despatch No. 44, Legislative, dated the 3rd December, 1896, and certain other Instructions contained in sub-rules (3), (4) and (5) of rule 1 and sub-rule (3) of rule 3, which were issued from time to time to supplement and explain the Instructions issued in 1898.

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LETTER No. 84, DATED 31st MAY, 1918.

From

THE HON'BLE MR. A. P. MUDDIMAN,  
C.I.E., I.C.S.,  
*Secretary to the Government of India,*  
*Legislative Department,*

To

THE PERMANENT UNDER SECRETARY OF  
STATE FOR INDIA.

I am directed to forward for the information of His Majesty's Secretary of State for India a copy of the revised Instructions regarding legislation in local Councils which have been issued to Local Governments having Legislative Councils.

2. The Instructions issued in 1913, which were reported for the information of His Majesty's Secretary of State for India with Sir William Vincent's letter No. 101, dated the 29th May, 1913, were recognised at the time to be deficient in one respect. Their main object was to secure that the Secretary of State and the Government of India should have ample time for the examination of a Bill before its introduction in a local Legislative Council. This object was not achieved in the case of measures promoted by non-official members of local Councils inasmuch as the minimum notice of a motion for leave to introduce a Bill prescribed by the rules of the different local Councils varied from three to seven days. It was accordingly suggested to Local Governments that the rules should be amended so as to require two months' notice of a Bill, and, in this connection, I am to invite attention to the Government of India despatches No. 4, Legislative, dated the 26th June, 1913, and



No. 6, Legislative, dated the 13th November, 1913, and subsequent correspondence. All Local Governments having Legislative Councils have now amended their rules so as to make it incumbent on non-official members to give two months' notice of a motion for leave to introduce a Bill, the latest amendments having been effected in the Madras rules as reported in the Government of India Legislative despatch No. 10, dated the 16th November 1917. It has therefore now become possible to revise the Instructions in this respect. In practice it has been found that Local Governments detain measures of this class for examination before reporting to the Government of India, and the main object of the Instructions embodied in the new rule, No. 10, is therefore to require Local Governments in the first instance to report such Bills forthwith without any examination of their merits. The rule is intended to be self-contained, and to enable both the Local Government and the Government of India to make the best use of the limited time at their disposal for the consideration of such measures.

3. Rule 6 of the Instructions has been recast. To a certain extent sub-rule (1) of that rule was superfluous in view of the provisions of sub-rule (2). The rule has been revised so as to require Local Governments to explain without delay their reasons for dealing with a measure under rule 5.

4. The object of the amendments introduced into rule 7 (now rule 8) and of the addition of a new rule, No. 7, is to ensure that the Government of India are kept in touch with all stages of legislation in local Councils; the want of such an arrangement as that now laid down in rule 7 has more than once occasioned some inconvenience and misunderstanding.

5. It will be observed that the opportunity has been taken to eliminate from the Instructions references to the Statutes repealed by the Government of India Act, 1915.

6. I am to add that Local Governments have been requested to construe until further orders the period of two months mentioned in rules 4 and 8 as three months, in accordance with the directions of the Secretary of State contained in his telegram, dated the 10th September, 1917.

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## APPENDIX IX.

LETTER TO LOCAL GOVERNMENTS REGARDING INSTRUCTIONS  
FOR LEGISLATION IN LOCAL COUNCILS.

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No. 1473.

FROM

THE HON'BLE MR. A. P. MUDDIMAN, C.I.E., I.C.S.,  
*Secretary to the Government of India,  
Legislative Department,*

TO

THE CHIEF SECRETARY TO THE GOVERNMENT OF  
BENGAL.

THE CHIEF SECRETARY TO THE GOVERNMENT OF  
BIHAR AND ORISSA.

THE CHIEF SECRETARY TO THE GOVERNMENT OF  
THE UNITED PROVINCES.

THE CHIEF SECRETARY TO THE GOVERNMENT OF THE  
PUNJAB.

THE CHIEF SECRETARY TO THE GOVERNMENT OF  
BURMA.

THE CHIEF SECRETARY TO THE GOVERNMENT OF  
MADRAS.

THE CHIEF SECRETARY TO THE GOVERNMENT OF  
BOMBAY.

THE CHIEF SECRETARY TO THE HON'BLE THE CHIEF  
COMMISSIONER, ASSAM.

THE CHIEF SECRETARY TO THE HON'BLE THE CHIEF  
COMMISSIONER, CENTRAL PROVINCES.

*Simla, the 5th June, 1918.*

I am directed to refer to the Hon'ble Sir William Vincent's letter No. 2005—2013, dated the 27th May, 1913, forwarding copies of the consolidated "Instructions to Local Governments regarding legislation in local Councils." These Instructions have now been amended (as contem-

( ) Omit to  
Madras.

plated in the letter from this Department, No. 3899, dated

3900  
169  
2064  
3046  
3899  
2063  
2587  
2588

26th October, 1915,

22nd January, 1917,

21st March, 1916,

7th July, 1916,

26th October, 1915,

21st March, 1916,

11th May, 1916,

11th May, 1916,

) and the opportunity has been taken to make amendments in certain other respects in which experience has shown that the Instructions were susceptible of amplification and improvement. These are referred to in the paragraphs below.

I am to forward copies of the revised Instructions and to request that with the permission of His Excellency the His Honour the The Hon'ble the

Governor in Council

Lieutenant-Governor (in Council)

Chief Commissioner

they may be carefully observed

in supersession of the Instructions issued in 1913.

2. The Government of India have recently had before them several cases in which Local Governments seem to have been in some doubt as to the manner in which rule 5 of the Instructions should be applied. This rule has not been amended, but I am to draw attention to the fact that in each of the three classes of cases contemplated by rule 5 (1) (b), (c) and (d) the decision rests with the Local Governments whether the rule should be applied or not. I am, however, to observe that it is not the intention of the Instructions that the rule should be applied in the later stages of a Bill which has been submitted to the Government of India and their administrative approval to the introduction of the measure obtained in the ordinary manner. Nor is it the intention that rule 5 (1) (d) should be invoked to save a position where the urgency has been created merely by failure to take timely action in a case where the necessity for legislation had already been foreseen.

3. Rule 6 of the Instructions has been recast so as to require a report without delay explaining why a measure

has been dealt with under rule 5, and I am to draw attention to the importance of a strict compliance with this rule.

4. Rule 7 of the Instructions now forwarded is new, and has been introduced to ensure that the Government of India are kept in touch with all stages of legislation in local Councils, as the want of such a rule has in the past caused inconvenience and misunderstanding. The amendments to old rule 7 (now rule 8) have been made to the same end.

5. In accordance with the request contained in the letter from this Department, No. 2541, dated 31st October, 1917, the period of two months mentioned in the first proviso to rule 4, and also in rule 8 (3), should until further orders be construed as three months.

6. I am to invite special attention to rule 10 of the Instructions which deals with the question of Non-official Members' Bills, and which requires that on receipt of notice of such a Bill, a copy of the Bill, and of the Statement of Objects and Reasons and notice, shall forthwith be forwarded to the Government of India in this Department, to be followed as soon as possible after by a further communication as to the policy of the measure and the attitude which the Local Government proposes to adopt towards it.

It will be understood that if the Bill of which notice has been given is subsequently revised by the local Legislative Department in consultation with the Member concerned before introduction, a copy of such revised Bill should similarly be forwarded to the Government of India in this Department. And if changes of substance are thus introduced into the Bill, it will be for the consideration of the Local Government whether a fresh notice should not be required from the Member concerned, so as to allow the Local Government, and the Government of India, the necessary time to examine the revised Bill.

When a Bill requires sanction under section 79(3) of the Government of India Act, 1915, it will not of course be opened to the Member giving notice to proceed further with his measure till the necessary sanction has been received, and it is therefore desirable that all Bills of this class should be carefully examined from this point of view.

7. \*In the second letter referred to in paragraph 1 above Local Governments were requested to construe the Instructions as if after the first proviso to rule 4 a further proviso were inserted forbidding the grant of sanction where required under section 80(2) of the Government of India Act, 1915, until the expiry of two months from the date of the notice of intention to introduce. It will be

\*Paragraph 7  
Omit to  
Madras.

observed that this proviso has not been embodied in the revised Instructions now forwarded, as it is considered that the period of two months' notice required by local rules makes the restriction unnecessary.

8. The following number of copies of the Proceedings of the local Legislative Council, of Bills and connected papers, and of Acts should be forwarded to this Department, namely :—

(i) of Proceedings of Council for office files . . . . .	3 copies.
(ii) of Bills and connected papers submitted to the Government of India in accordance with the Instructions . . . . .	50 copies.
(iii) of Bills as introduced in Council with Statement of Objects and Reasons and Extracts from the Proceedings of Council relating thereto—In the case of Bengal, Bombay and Madras Bills . . . . .	10 copies.
In all other cases . . . . .	20 copies.
(iv) of Reports of Select Committees and of Bills as amended by the Select Committee when the case falls within rule 8 of the Instructions:—In the case of Bengal, Madras and Bombay Bills . . . . .	10 copies.
In all other cases . . . . .	20 copies.
(v) of Acts for office files . . . . .	32 copies.

Bill as introduced.  
Statement of Objects and Reasons.

Report of Select Committee (if any.)

Amended Bill (if any.)

Papers (if any) relative to the Bill.

Bill as passed.

Extracts from the Proceedings of Council relating to the Bill in its several stages (the dates of the meetings being mentioned in the forwarding letter).

9. In the case of Bills submitted for the assent of the Governor General, under section 81 (3) of the Government of India Act, 1915, fifty copies of each of the papers specified on the margin should in each instance be furnished.

10. Spare copies of Bills and connected papers should be forwarded simultaneously with a Bill, or the draft of a Bill, as the case may be, submitted to this Department under the Instructions regarding legislation in local Councils, but spare copies of Reports of Select Committees and of Bills as amended by the Committees should be supplied only when it is found necessary to proceed under rule 8 of the Instructions.

11. When an Executive Department of the Government of India is addressed under the Instructions in regard to proposed legislation, 50 spare copies of the draft Bill and of all connected papers should be forwarded to the Executive Department. It will *not* then be necessary to send spare

copies of the Bill and connected papers simultaneously to this Department, as the 50 copies forwarded to the Executive Department will meet all the requirements of the Government of India.

12. Copies of the Acts and Proceedings of Council specified in the annexed statement should be despatched direct to the India Office as soon as they are ready. (The price to be fixed in the case of sale should be intimated in the covering letter, which should be addressed to the Permanent Under Secretary of State for India.) \*  
 (Only to Bengal, Madras and Bombay.)  
 \* [This Department should also be informed of their despatch by a separate letter of which three spare copies (printed or type-written) should be forwarded, intimating the price to be fixed in the case of sale.]  
 \*[Omit to Bengal, Madras and Bombay.]

13. Authentic copies of Laws submitted for the Governor General's assent should be printed on superior paper and the type should be so arranged as to leave sufficient space at the end of the last page of a Law, not only for the record by the Secretary of the Local Council of the fact that the Law is a "true copy," but also for the additional endorsements that have to be made in the Legislative Department of the Government of India, namely :—

- (1) for His Excellency's signature, and
- (2) for the certificate on the copy transmitted to His Majesty's Secretary of State that the Law is an authentic copy.

*Statement showing the number of copies of Acts and of the Proceedings of Council to be despatched direct to the India Office as soon as they are ready.*

	No. of copies.
Of each Act as passed and papers connected therewith, including Extracts from the Proceedings of Council relating thereto . . . . .	2
Of Acts (octavo edition)—	
For the Secretary of State . . . . .	24
For All Souls College, Oxford . . . . .	1
For the Society of Comparative Legislation, London . . . . .	1
For sale through the India Office . . . . .	10
Of Proceedings of each meeting of Council—	
For the Secretary of State . . . . .	10
For the Under Secretary of State . . . . .	2
For the Society of Comparative Legislation, London . . . . .	1
Of bound Annual Volumes of Proceedings of Council—	
For the Secretary of State . . . . .	2

## APPENDIX X.

CORRESPONDENCE REGARDING THE POSITION OF PROVINCIAL  
OFFICIAL MEMBERS OF THE INDIAN LEGISLATIVE  
COUNCIL.

<sup>1</sup>*Extract from a letter No. 2590, dated 4th September, 1911, from the Secretary to the Government of India, Legislative Department (the Hon'ble Mr. J. M. Macpherson), to the Chief Secretary to the Government of Madras.*

I am directed to acknowledge the receipt of your letter Finance Department, No. 314, dated the 26th June, 1911, addressed to the Secretary to the Government of India, Home Department, in which the Government of Madras \* \* \* urge that the provincial Official Members of the Imperial Legislative Council should continue to have the same freedom of speech as they have enjoyed in the past.

\* \* \* \* \*

3. \* \* \* \* \* I am to point out that, owing to the reconstitution of the Imperial Legislative Council in accordance with the reform scheme which involved a large increase in the non-official element in the Council, and the reduction of the official majority to the lowest number consistent with its maintenance, the situation has been entirely changed, and it is no longer possible to permit the official representatives to have the same latitude in the Budget debate as they formerly had. Provincial and other Official Members are now nominated to the Governor General's Council for the express purpose of supporting the Supreme Government, and the Governor General in Council is of opinion that their position in regard to Budget debates must now be considered to be the same as their position in regard to other debates where it is well settled that they are bound to support the Government unreservedly.

4. In conclusion, I am to say that it is hoped that the above observations will be sufficient to indicate to the Local Government the views of the Government of India as to the position of provincial Official Members in the enlarged Imperial Legislative Council, and that the Local Government will recognise that it would be highly impolitic as being likely to weaken the influence of the official majority which must be maintained in that Council, to permit such

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<sup>1</sup> See Leg. Dept. A Progs., Sept. 1911, Nos. 34—39.

Members to have the freedom of speech in the Budget debate advocated in their letter.

*The above views were also communicated to the Government of Bombay in letter No. 2589, dated 4th September, 1911, and to the Governments of Bengal, Eastern Bengal and Assam, the United Provinces, the Punjab, Burma and the Central Provinces in Circular letter No. 3002 to 3007, dated 30th September 1911—see Leg. Dept. A Proceedings, September 1911, Nos 34 to 39.*

<sup>1</sup>*Extract from a despatch No. 185-Public, dated the 27th September, 1912, from the Secretary of State (Lord Crewe).*

I have received Your Excellency's despatch in the Legislative Department, No. 6, dated 13th June, 1912, forwarding correspondence between your Government and the Governments of Madras and Bombay on the subject of the position of the Officials selected on the nomination of Provincial Governments to be Members of the Imperial Legislative Council.

\* \* \* \* \*

3. \* \* \* \* \* I observe that expressions have been used in this correspondence which might be taken to imply that the Government of India and the Local Governments are charged with the defence of independent and therefore possibly conflicting interests. They are in fact essential parts of one system of administration. In the conduct of business, and especially of financial business, differences of opinion must from time to time arise. These differences are settled by conference and correspondence, and the settlement becomes part of the general policy of Government. This consideration imposes a certain reserve on all Official Members of the Imperial Council. The Official representative of a Province is, I think, entitled to point out that his Local Government is hampered by want of resources in developing its institutions, he may plead even for a more liberal recognition of the needs of the Province for which he speaks. But if he presents his case in the form of a complaint against the Government of India he is re-opening settled questions ; he is making a kind of appeal to the Council in a matter which is beyond the scope of its authority. On the other hand, a Member of the Government of India is entitled to explain the general policy of the Government of India in his Department, and to contend that the difficult duty of holding the balance even as between

<sup>1</sup>See Legislative Department A. Progs., October 1913, Nos. 15—20.



Provinces has been carefully and, on the whole, successfully performed. But if he blames a Local Government for persistence in urging its claims, or its representative for presenting those claims to the Council, he goes, I think, beyond the scope of his official duty.

4. Some Local Governments apprehend that, if any limitation is imposed, the Officials, nominated on their recommendation, will feel that they are summoned only to give a silent vote in support of Government measures. This is not at all my view of the case. Subject to the considerations I have stated, it is the duty of a provincial Member to see that the needs and the usages of his own Province are not overlooked in framing general measures of legislation and finance; the efficient and independent performance of this duty is of the utmost importance. Since the enlargement of the Council, its debates, as was expected and intended, have taken a wider range, and its Official Members have to deal with a large and sometimes a formidable body of non-official criticism. I trust, therefore, that the conventions which secure co-operation between central and local authorities may always be carefully observed.

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<sup>1</sup> *Extract from a despatch No. 184-Public, dated the 25th July, 1913, from the Secretary of State (Lord Crewe).*

I have considered in Council the letter<sup>1</sup> of Your Excellency's Government in the Legislative Department, No. 3, dated the 8th May last, in which you reply to my Public Despatch No. 185, dated the 27th September, 1912, regarding the position of the Officials selected on the nomination of Provincial Governments to be Members of the Imperial Legislative Council. Your Excellency's Government are unwilling to let matters rest as I had hoped, with my despatch, and you desire that definite rules should be laid down to enable both the Government of India and provincial Official Members to appreciate correctly their respective positions in the Imperial Legislative Council during the Budget debate.

\* \* \* \* \*

I cannot therefore admit that the argument from analogy throws doubt on the correctness of the principles which in my former despatch I suggested should regulate the position of official representatives of Provinces in the Imperial Council. I do not think that I can usefully amplify the statement of those principles, and I agree with

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<sup>1</sup> See Legislative Department A. Progs., October 1913, Nos. 15—20.

Your Excellency's Government that they cannot be reduced to hard and fast rules. In conventions of the kind in question, it is the spirit and not the letter to which one must look for their due observance. A certain freedom of representation is quite compatible with complete loyalty to the Government of India, and it is in my view highly desirable to permit the greatest latitude possible to provincial representatives in Your Excellency's Council, seeing that you have full right of reply and full control of order during debate. It is even probable that requests from various provinces, if clothed in suitable terms, can be utilised in replying on the debate to convince Non-official Members that the Government of India have to take a wider outlook in allotment of funds than the needs of any one province or of any one service.

It remains for Your Excellency to communicate my views on the matter under reference to the heads of Local Governments in such manner as you may think proper, and to give effect to them in your capacity as President of the Legislative Council.

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## APPENDIX XI.

## NOTE ON LEGISLATION AFFECTING THE JURISDICTION OF THE HIGH COURTS.

The question has frequently been raised whether the Government of India have power by legislation to interfere with the jurisdiction of the Chartered High Courts. It is possible that all legitimate doubts have been finally set at rest by the recent Statutes, but the way in which the matter has been dealt with in them is not altogether satisfactory, and it may therefore still be worth while to consider the question in some detail.

2. Much ingenuity has been displayed from time to time in devising grounds of attack. It has been contended that any derogation from the jurisdiction of the High Courts is *ultra vires* the Government of India as affecting Acts of Parliament: that some part at all events of the High Courts' jurisdiction being derived directly from Royal Charters could not be touched by the Indian legislature without express authority from Parliament: that the saving clauses in the various Letters Patent were themselves *ultra vires*: that even if the Indian legislature had power to legislate for existing Courts, they had no power to create new Courts: and, finally, that if they had power to create new Courts, they could not withdraw them from the superintendence of the High Courts.

3. The principal arguments in the past have centred upon section 22 of the Indian Councils Act, 1861 (24 & 25 Vict., c. 67), which precluded the Governor General in Council from making laws repealing or affecting the provisions of any Act of Parliament passed after the year 1860, which would include the Indian High Courts Act, 1861 (24 & 25 Vict., c. 104); and upon this it has been contended that different Acts of the Indian legislatures which purported to interfere with the jurisdiction of the High Courts were *ultra vires*.

4. Section 9 of the Indian High Courts Act conferred upon the High Courts a two-fold jurisdiction, first, what may be called the Letters Patent jurisdiction, and secondly, all preexisting, or as it has sometimes been termed "inherited," jurisdiction, which was vested in the old Supreme and Sudder Courts and which was not negatived by the Letters Patent. This latter jurisdiction was by the terms of the section to be subject and without prejudice to the legislative powers of the Governor General in Council, which can only mean that the Governor General in Council was to have power by legislation to override the statutory grant, and this seems now to be universally accepted.

5. But with regard to the Letters Patent jurisdiction, the section contains no such reservation. In all the Letters Patent so granted, however, the jurisdiction of the High Court is declared specifically to be subject to the legislative powers of the Governor General in Council who is to be entitled to amend and alter them in all respects: (*see* clause 44 of the Letters Patent for Calcutta, Madras and Bombay, clause 35 of the Allahabad Letters Patent and clause 41 of the Patna Letters Patent). This declaration appears, at first sight at all events, to have been intended to put the Letters Patent jurisdiction on exactly the same footing as the inherited, and if this is the real meaning of the clause, and it was not *ultra vires*, it seems to follow that the High Courts were in all jurisdictionary matters subject to the legislative control of the Government of India. There has however been the greatest diversity of opinion upon this question among the Judges, and it is impossible even now to affirm with any certainty which of the three main theories which have been put forward is correct.

6. In *Reg. F. Edward Reay*, 7 Bombay II. C. R. Cr. Ca., page 6, the question was as to the validity of an Act of the Bombay legislature, which under section 42 of the Indian Councils Act, 1861, had no power to make a law affecting in any way the provisions of any Act of Parliament in force in that Presidency. No question of course arose as to the reservations in the High Courts Act and Letters Patent in favour of Government of India legislation, and the only point raised was whether the local Act in question (the Bombay District Police Act, VII of 1867) "affected" any Act of Parliament in force. The Bombay Act purported to confer upon certain Magistrates jurisdiction to try British-born subjects. The Court (Gibbs and Sargent, J.J.) held that Parliament had by Statute conferred exclusive jurisdiction, with certain immaterial exceptions, over all British-born subjects upon the High Court, and that the Bombay Act in so far as it purported to give concurrent jurisdiction to other Courts "affected" the Statute, and was consequently *ultra vires*.<sup>1</sup>

7. Gibbs, J., also held that inasmuch as this jurisdiction was derived from a Royal Charter, the Bombay Council could not detract from it. This passage in the judgment (*see* at page 21 of the report) is perhaps rather obscure, but it seems to be based on the doctrine that no subordinate legislature could override the Royal Prerogative without

<sup>1</sup> A slightly less extensive view of the meaning of "affect" was taken by the same High Court in *Premshanker v. the Government of Bombay*, 8 Bom. H. C. R. (A.C.J.) 199. *See* also *The Collector of Thana v. Bhaskar*, I. L. R., 8 Bom. 264, and a note of Sir Courtenay Ilbert of 3rd February 1883, Legislative Department A., Progs., February 1883, Nos. 126 to 133.

express power from Parliament. Section 24 of the Indian Councils Act, 1861, specifically conferred this power upon the Governor General in Council, and the argument would, therefore, seem to be inapplicable to the Government of India, but until recently it was not extended to local legislatures ( *see* now section 84 (a) of the Government of India Act, 1915, as amended by section 2 (2) of the Act of 1916).

8. The decision in *Reay's* case had of course no immediate bearing upon the powers of the Government of India, except so far as it elucidated the meaning of the word "affect." The sequel to the case however is of some interest, as the Government of India proceeded to legislate themselves to set the matter right. They could, no doubt, if the argument above is correct, have validly enacted the provisions which had been held to be *ultra vires* in the case of the Bombay<sup>1</sup> Council, but instead of doing this they affected to declare (*see* Act XXII of 1870) that the Bombay Act, and other like enactments passed by the Madras and Bengal Councils, should be and be deemed to have been as valid as if they had been passed by the Governor General in Council. If, however, these local Acts infringed the terms of section 42 of the Indian Councils Act, 1861, it seems at least doubtful if the Government of India could validate them this way. The matter, however, was not left there. It was considered essential that local legislatures should have power to provide for the trial of European British subjects, and Parliament accordingly intervened by 34 & 35 Vict., c. 34, which provided that no Act of a local legislature, *whether past or future*, should be invalid merely because it conferred upon Magistrates jurisdiction over European British subjects. The reference to past Acts was no doubt intended to cure the possible defect referred to above in the Indian Act XXII of 1870. It is noteworthy that, in passing the 1871 Statute, Parliament did not think it necessary to confer upon the Legislative Council of the Governor General the power which it then accorded to local legislatures, and this could only have been because the Governor General's Council already had such power in virtue of section 9 of the High Courts Act, 1861, and the provisions of the various Letters Patent.

9. A few years later the Calcutta High Court had to consider a very similar question with regard to the Government of India (*The Queen v. Meares*, 14 Bengal L. R., 106)

<sup>1</sup> For an instance of similar validating legislation *see* s. 1 of Act XIV of 1904 supplementing the City of Bombay Improvement Act, 1898 (Bom. Act IV of 1898). *See* also in this connection the Punjab Courts (Supplementing) Act, 1919, in the case of which this form of validating legislation was not adopted.

and in this case Sir Richard Couch put forward the first of the three theories above referred to, *viz.*, that *even if clause 44 was ultra vires, the Letters Patent were no part of the Act of Parliament, and there was therefore no statutory prohibition upon their variation.* By Chapter VII of the Criminal Procedure Code, 1872, jurisdiction over European British subjects was conferred upon certain Magistrates, and this, it was contended, was *ultra vires* inasmuch as it "affected" the jurisdiction of the High Court under clause 21 of the Letters Patent of 1862. The Chief Justice who delivered the judgment of the Court, Phear, J. concurring, was not prepared to decide against this contention on the short ground that clause 44 of the amended Letters Patent expressly recognised the legislative powers of the Government of India, and he evidently had doubts as to whether this latter clause was within the competence of the Sovereign, the suggestion being no doubt (as appears from the subsequent cases) that Parliament having delegated to Her Majesty authority to declare by Letters Patent what the High Courts' jurisdiction should be, authority to vary it could not be re-delegated by the Letters Patent to the Government of India. He, however, upheld the validity of the particular provisions of the Criminal Procedure Code upon the ground above stated. It is curious that in a case reported earlier in the same volume (*Madhub Chunder v. Rajcoomar*, 14 Bengal L. R. 76) the learned Chief Justice appeared (*see at page 84*) to rely on clause 44 as giving the Government of India in its legislative capacity control over the provisions of the Letters Patent, but this decision is not referred to in *Meares'* case. It has also been suggested that the adoption of this theory would leave it equally within the competence of a local legislature to override any of the provisions of the Letters Patent, a view which would not only conflict with the judgments in *Reay's* case, but would seem to be contrary to the current of Parliamentary legislation on the subject. This, however, would not necessarily be so, as the second part of section 9 of the High Courts Act, 1861, would exempt all pre-existing powers of any Courts from the interference of legislatures other than that of the Governor General in Council.

10. The second theory, enunciated by Markby, J. in *Feda Hoosein's* case, 1. L. R., 1 Cal. 431, was that *clause 44 of the Letters Patent was only intended to be a reiteration of what was laid down by Parliament in section 9 of the Act, and had no independent force of its own.* The question argued in the case was whether the right of appeal to the Privy Council embodied in clause 39 of the Letters Patent could be restricted by the provisions of an Act passed by the Governor General in Council (the Privy Council Appeals Act, VI of 1874). Markby, J. though sitting alone, dissented vigorously

from the view adopted by Couch, C. J. and Phear J. in *Meares'* case that the Letters Patent were not part of the Act of Parliament,<sup>1</sup> but held that legislative interference with clause 39 of the Letters Patent was permissible on the ground that the powers of the High Court which the Indian Act affected were pre-existing powers, and not powers conferred for the first time by the Letters Patent,—in other words, that the case was governed by the second part of section 9 of the High Courts Act—and he would apparently have supported the decision in *Meares'* case upon similar grounds. Dealing with clause 44 of the Letters Patent, he says (page 448). “When the old powers of the abolished Courts were merely repealed in the Letters Patent, it was, of course, understood by Her Majesty that these were subject to be altered by the Governor General in Council, and very likely it is because this is done to so very large an extent, that the legislative powers of the Governor General in Council are in the 44th clause of the Letters Patent expressly recognized.” He seems to admit that there were at all events *some* new powers conferred by the Letters Patent, and in view of the very comprehensive form of words used in clause 44 : *viz.*, “We do ... ordain and declare that all the provisions of these Our Letters Patent are subject to the legislative powers of the Governor General in Council.....and may be in all respects amended and altered thereby,” this explanation can hardly be considered satisfactory. If, however, no new powers were conferred, it would follow from the adoption of this theory that there was no limitation placed upon the right of the Governor General in Council to legislate, though to this Markby, J. would not apparently have been prepared to assent : see at page 449.

11. The last of the three theories, and perhaps the simplest, is that clause 44 meant exactly what it said and was not in any sense *ultra vires*, in other words that it put the Letters Patent jurisdiction on exactly the same footing in relation to the legislative powers of the Governor General in Council as the pre-existing or inherited jurisdiction was under section 9 of the Act. This seems to have been the view taken by Sir Richard Couch in *Madhub Chunder's* case above referred to, and see *Rangit Singh v. Meherban Koer*, 2 Cal. L. R. 39 1 : *Achaya v. Ratnavelu*, I. L. R., Mad. 253 (followed in *Banno Bibi v. Mehdi Husain*, I. L. R. 11 All. 375); *Vasudeva v. Visvaraja*, I. L. R. 20 Mad. 407 : *in re James Currie*, I. L. R. 21, Bom. 405 : *Parmeshwar v. Emp.*, 3 Patna L. J. 537. The most important authority however for this view is Lord Selborne's judgment in *The Queen v. Burah*, L. R. 5 I. A. 178, the only case

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<sup>1</sup> And see Macpherson, J. to the same effect I. L. R. 3 Cal., at page 118.

in which this question has been dealt with by the Privy Council.<sup>1</sup>

12. *Burah's* case is one of such general importance from the point of view of the legislative powers of the Government of India that it requires detailed consideration. By Act XXII of 1869, the Indian legislature purported to remove the Garo Hills district from the jurisdiction of existing civil and criminal Courts, and to subject it to such Courts as the Lieutenant-Governor of Bengal might appoint. Section 9 of the Act empowered the Lieutenant-Governor to extend the provisions of the Act to the Kasi and Jaintia Hills, which he subsequently did by notification. Under this Act the respondent and another person were tried and convicted for murder by the Deputy Commissioner of the Kasi and Jaintia Hills. They appealed to the Calcutta High Court contending that the conviction was illegal. The appeal was supported upon two main grounds, (1) that the Act so far as it purported to affect the jurisdiction of the High Court was *ultra vires*, and (2) that in any case section 9 was *ultra vires* inasmuch as it affected to delegate the powers of the Governor General in Council so to legislate to the Local Government. The case was heard by seven Judges who all held on the first point that the Governor General in Council had power to remove a particular district from the jurisdiction of the High Court and, presumably, to make it over to a new Court of its own creation. The judgments seem to indicate that this power was based upon section 9 of the High Courts Act rather than upon clause 44 of the Letters Patent. Seeing, however, that the Indian Act in question purported to remove the particular territory from the High Court's jurisdiction of whatever nature, and however conferred, it seems a little difficult to understand how only the "inherited" jurisdiction was concerned, unless possibly it was considered that no new jurisdiction at all was conferred by the Letters Patent.<sup>2</sup> Upon the second point there was a difference of opinion, the majority of the Court holding that the Governor General in Council had no power to delegate his legislative functions to the Lieutenant-Governor, and that therefore *qua* the Kasi and Jaintia Hills the jurisdiction of the High Court remained unaffected.

13. In the Privy Council, where an appeal by Government was admitted by special leave, the first point was again pressed, and was dealt with on apparently broader grounds than in the High Court. *The Queen v. Meares* and *Feda Hoosein's* case were referred to, and Lord Selborne in deliver-

<sup>1</sup> It was raised but avoided in *Hurri Chunder v. Kali*, L. R. 10 I. A. 4 : see at p. 10.

<sup>2</sup> This seems to have been the view of Macpherson J. : see at page 118 of the Report, I. L. R. 3 Cal.



ing the judgment of the Committee after referring specifically to the words of reservation both in section 9 of the High Courts Act and in clause 44 of the Letters Patent says (page 192)

“ So far, therefore, from being in contravention of any of the provisions of the Statute 24 & 25 Vict., c. 104, or of the Letters Patent issued under that Statute (as altered by the Act of 1865), their Lordships find that such an exercise of legislative authority by the Governor General in Council as might remove any place or territory from the jurisdiction of the High Court at Calcutta, is expressly contemplated and authorized both by those Statutes *and by the Letters Patent themselves*. Their Lordships, under these circumstances, agree with the High Court that Act No. XXII of 1869 was, in its general scope, within the legislative power of the Governor General in Council.”

Upon the second point, their Lordships disagreed with the majority of the High Court. They held that the Indian legislature when acting within the limits of the powers conferred upon them by Parliament is not in any sense an agent or delegate of Parliament, but has plenary powers of legislation as large, and of the same nature, as those of Parliament itself, and that these powers can be exercised either absolutely or conditionally, the so-called delegation to the Lieutenant-Governor being only a conditional exercise of a well established character.

14. It might not unreasonably have been thought that the passage above cited from Lord Selborne's judgment was conclusive as to the legislative supremacy of the Indian legislature, but the point was raised and argued again in two cases arising out of the Bakir-id riots in Bihar in 1917. By the Defence of India Act, IV of 1915, the Local Governments were authorized to appoint Commissioners for the trial of certain offences, and by section 8 (Z) of the Act all interference by other criminal Courts was excluded in the most comprehensive terms. On the occasion of the riots above referred to, the Bihar Government appointed Commissioners to try the offenders, and in two of the cases applications were made to the local High Court impeaching the validity of the Act.

15. In the first case, *Parmeshwar v. Emp.*, 3 Patna L. J. 537 (1917 F. B.), which was heard by a Bench of five Judges, the principal question argued was whether the Government of India had power to establish a criminal Court, the contention being that the power to make laws and regulations

conferred by section 22 of the Indian Councils Act, 1861<sup>1</sup>, did not authorize the creation of Courts, which was the exclusive privilege of the Crown in Parliament, and this raised incidentally the question whether the Letters Patent jurisdiction was subject to the legislative powers of the Governor General in Council. The Chief Justice in the course of an elaborate judgment, in which two of the other Judges formally concurred, says (page 553)

“It is clear, therefore, that whatever jurisdiction this Court has, whether derived from the Letters Patent or whether as the successor to the jurisdiction which the High Court at Calcutta formerly exercised in this province, in either case such jurisdiction is subject to the legislative powers of the Governor General in Council.”

He also held that the creation of a new Court was within the competence of the Indian legislature, though he rested his decision on this part of the case rather upon the construction of the Indian Councils Act, viewed in the light of previous enactments and the powers consistently exercised under it, than upon *Burah's* case in which the point, though undoubtedly involved, was not specifically dealt with by Lord Selborne.

16. The second Patna case, *Sheonandan v. Emp*, 3 Patna L. J. 581, did not add much to the weight of authority on the Letters Patent question, and was chiefly remarkable for the fact that the three theories above set out each found a supporter among the three Judges by whom the application was heard. The Chief Justice, despite the pronouncement quoted above, and his statement (pages 588-589) that he saw no reason after further consideration to modify the opinion which he had expressed in *Parmeshwar's* case, adopted the second theory : Mullick, J. adopted the first : and Imam J. the third.

17. The principal question argued was whether the Defence of India Act, in so far as it purported to create a criminal Court which was not subject to the superintendence of the High Court was *ultra vires*. The argument turned largely on clause 27 of the Letters Patent by virtue of which the High Court was invested with appellate powers over all criminal Courts within the limits of its territorial jurisdiction, the right of superintendence being under section 15 of the High Courts Act, 1861, dependent on the co-existence of appellate powers. The question was therefore directly raised whether the Governor General in Council had power in spite of clause 27 to create a criminal Court from which there was no appeal to the High

<sup>1</sup> The Defence of India Act was passed before the Government of India Act, 1915, came into force, and the case was therefore tried under the old Statutes.

Court, and this of course involved the old question of clause 44. All three Judges were of opinion that the new Court was well created, and that it was not in any way subject to the High Court's jurisdiction. They also agreed that clause 44 of the Letters Patent was not *ultra vires*. The Chief Justice, however, seems to have been of opinion that no new powers were conferred by the Letters Patent, and that clause 44 did no more than give expression to the limitation enacted by Parliament in section 9 of the Statute (p. 592) Mullick J. on the other hand, thought it quite clear that the Letters Patent were not part of an Act of Parliament and therefore (apparently) that there was no statutory prohibition to their alteration by Government of India legislation, his view of clause 44 being that it "merely states the law as it stood and reiterates for the sake of greater caution the power of the Governor General<sup>1</sup> to modify the terms of the Letters Patent if he so chooses" (page 615). Imam J. considered that clause 44 was within the competence of the Crown, and that it clothed the Governor General in Council with authority to vary or modify the provisions of the Letters Patent, there being no question of re-delegation of a delegated power, and he cited *Burah's* case (*supra*) in support of this view.

18. This review of the main features of the case law does not disclose a very satisfactory state of the authorities, but one fact seems to emerge, *viz.*, that though the validity of all sorts of different Acts of the Governor General in Council<sup>1</sup> has been attacked during the last half a century on the ground that they infringe in one way or another the jurisdictional privileges of the Chartered High Courts, in no single case has the attack been successful, and the Government of India have gone on legislating during the same period upon the evident assumption that there was no particular sanctity in the Letters Patent.

19. A few additional instances may be worth referring to:—

The jurisdiction of the Calcutta High Court was *restricted* by Act VI of 1900<sup>2</sup>, which constituted a Chief Court for Lower Burma and removed it in all respects from the jurisdiction previously exercised by that High Court: it was *extended* by Act XIX of 1867<sup>3</sup> which brought under it the district of Darjeeling.

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<sup>1</sup> Apparently a slip for Governor General in Council.

<sup>2</sup> Lower Burma Courts Act, 1900. See sections 8, 42, 44, and 45.

<sup>3</sup> Darjeeling (High Court's Jurisdiction) Act, 1867. It seems clear that the object of this part of the Act, which was only inserted in Select Committee could equally well have been attained by a notification under 28 & 29 Vict., c. 15, which had only recently been passed.

Again, the Indian Divorce Act (IV of 1869) in effect extended the jurisdiction of the Allahabad High Court by giving it jurisdiction for some purposes in matrimonial cases instituted in the Courts of the District Judges of Oudh<sup>1</sup>.

20. In 1905, the district of Sambulpore, which had until then been a part of the Central Provinces and under the jurisdiction of the Judicial Commissioner, was made part of Bengal, and jurisdiction over it was conferred upon the Calcutta High Court. The case, however, is to be distinguished from those above cited as the transfer was effected by notification under section 3 of 28 & 29 Vict., c. 15<sup>2</sup> This Statute has sometimes been referred to as indicating that where it was desired to give the Government of India power to interfere with the jurisdiction of a Chartered High Court, it was thought necessary to do so by an express Statute; but in reality the argument goes rather the other way. If the conclusion arrived at in the preceding portion of this memorandum is correct, the Government of India already had power themselves to interfere by *legislation*—a power which had been specifically exercised in the case of Darjeeling—but the new power given by section 3 of the Statute of 1865 was to interfere *by executive order*, which was quite another thing. It may not unreasonably be argued that, unless the power of interference by legislation had already existed, the 1865 Statute would certainly have given it, as it is almost inconceivable that power should be given to do by executive order an act which could not be done by legislation.

21. Under the Criminal Law (Amendment) Act, XIV of 1908, special Benches of the High Court have been called into existence by executive order for the trial without a jury of scheduled offences under a special procedure. Many cases have been so tried under this Act in Calcutta and Bombay, but though the form of trial appears to constitute a distinct invasion of the pre-existing rights of the High Courts, no doubt has ever been thrown upon its validity.

But perhaps the most drastic interference of all with the supposed prerogative of the High Courts was by section 527 of the Criminal Procedure Code, by which the Governor General in Council was empowered to transfer, of his own motion, cases from the jurisdiction of one High Court to that of another. This power has been exercised in a considerable number of cases, and always, it is believed, without challenge.

22. It is interesting to note in connection with the general question that section 46 of the Government of India

<sup>1</sup> See *Percy, v. Percy*, I. L. R., All. 375.

<sup>2</sup> The Indian High Courts Act, 1865. See also *Baleshwar v. Bhagirathi*, I. L. R., 35 Cal. 701.



entered as "jurisdiction, powers and authority of High Courts." The heading of the Schedule is "Provisions of this Act which may be repealed or altered by the Governor General in Legislative Council," and the obvious intention of the draftsman, therefore, would seem to have been to give express power to the Government of India by legislation to repeal or alter any of the provisions of section 106. The section itself, however, is not at first sight in accordance with this. The wording, in its strict interpretation, seems to suggest no more than a saving of existing powers, which would leave the whole question open as to whether the Government of India did in fact possess such powers or not. The adoption of this form of words in section 131 (3) is, however, probably to be explained by reference to section 65, the first sub-section of which declares<sup>1</sup> the general legislative powers of the Government of India, and then in sub-section (2) cuts them down by the proviso that unless express power is given no Indian Act may repeal or affect an Act of Parliament. The intention of section 131 (3) may, therefore, have been to make the proviso inapplicable to the provisions mentioned in the Fifth Schedule, leaving the general powers of legislation under section 65 (1), with regard to these matters, unfettered. This is at all events a reasonable method of reconciling the heading of the Schedule with the section, and reading the two together the intention would be clear. The heading of the Schedule is part of the Act, and seems to be much in the same position as a preamble (*see per Channel B. in Eastern Counties, etc. v. Marriage*, 9 H. L. Cas. at p. 41). It may, therefore, legitimately be used as a key to the interpretation both of the Schedule which follows it and of the section which the Schedule is intended to amplify.

G. R. L[OWNDES],—15-1-19.

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<sup>1</sup>This is the form adopted by the Act. It does not *grant* powers, but *declares* their existence.

## APPENDIX XII.

## FORMS.

1. Substantive appointment of Ordinary Member of Governor General's Executive Council.
2. Conditional appointment of Ordinary Member of Governor General's Executive Council.
3. Temporary appointment of Ordinary Member of Governor General's Executive Council.
4. Appointment of Vice-President of Governor General's Executive Council.
5. Grant of leave to Ordinary Member of Governor General's Executive Council.
6. Notification appointing place for assembling of Governor General's Executive Council.
7. Notification appointing time and place for assembling of the Indian Legislative Council.
8. Nomination of Additional Member of the Indian Legislative Council.
9. Publication of election of Additional Member of the Indian Legislative Council.
10. Resignation of Additional Member of the Indian Legislative Council.
11. Summons issued to Members at beginning of each Session of the Indian Legislative Council.
12. Passing of law by the Indian Legislative Council and assent of Governor General thereto.
13. Passing of law by Local Legislative Council and assent of Governor (or Lieutenant-Governor) and of Governor General thereto.
14. Making and promulgation of an Ordinance under section 72 of the Government of India Act, 1915.
15. Proclamation constituting Executive Council of a Lieutenant-Governor.
16. Appointment of Members of Executive Council of a Lieutenant-Governor.
17. Notification publishing a Regulation made under the Government of India Act, 1915.
18. Report of Select Committee.
19. Report of Proceedings of the Indian Legislative Council.

20. Statement regarding the translation and publication by Local Governments of Acts of the Indian Legislative Council.

21. List of Legislative Business pending in the Indian Legislative Council.

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<sup>1</sup>No. 1.

*Substantive appointment of Ordinary Member of Governor General's Executive Council.*

A vacancy having occurred in the office of an Ordinary Member of the Executive Council of the Governor General of India by [the appointment of the Honourable Sir A. B. to the office of Lieutenant-Governor of , or as the case may be] His Majesty the King, Emperor of India,<sup>2</sup> has been graciously pleased to appoint Mr. C. D. to be an Ordinary Member of the said Council.

The Honourable Mr. C. D. has on this day taken upon himself the execution of his office under the usual salute.

Y. Z.,

*Secretary to the Government of India.*

*(Another form)*

A vacancy having occurred in the office of an Ordinary Member of the Executive Council of the Governor General of India by the death of the Hon'ble Sir A. B., and the Hon'ble Sir C. D., who was acting temporarily as an Ordinary Member of the said Council, having been appointed by His Majesty the King-Emperor of India, an Ordinary Member of the said Council, it is hereby notified that the

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<sup>1</sup> Cf. Home Department's Notification No. 257, dated the 21st April, 1917, *Gazette of India, Extraordinary*, dated 21st April, 1917 and No. 1087 in *ibid*, dated 5th July, 1915. See s. 36 of the Government of India Act, 1915, *ante*.

<sup>2</sup> His Majesty should be so styled in all instruments, "save and except all Charters, Commissions, Letters Patent, Grants, Writs, Appointments, and other like instruments not extending in their operation beyond the United Kingdom." See the Royal Titles Act, 1876 (39 Vict., c. 10), and Proclamation issued thereunder in the *Gazette of India*, 1877, Pt. I. p. 16.

In pursuance of a further proclamation issued under the Royal Titles Act, 1901 (1 Edw. 7, c. 15), His Majesty's full style and titles are "George the Fifth, by the Grace of God, of the United Kingdom and Ireland and of the British Dominions beyond the Seas—King, Defender of the Faith, and Emperor of India."



Hon'ble Sir C. D., assumed the permanent office of an Ordinary Member of the said Council, with effect from the 2nd March, 1912.

Y. Z.,

*Secretary to the Government of India.*

<sup>1</sup>No. 2.

*Conditional appointment of Ordinary Member of Governor General's Executive Council.*

Mr. A. B. having under section 88 of the Government of India Act, 1915, (5 & 6 Geo. 5, c. 61),<sup>2</sup> been conditionally appointed by His Majesty the King, Emperor of India, to succeed to the office of Ordinary Member of the Executive Council of the Governor General of India, and a vacancy having been caused in the said Council by the departure on leave of absence under medical certificate of the Hon'ble Mr. C. D. [*or as the case may be*], the Hon'ble Mr. A. B. has on this day taken upon himself the execution of his office under the usual salute.

Y. Z.,

*Secretary to the Government of India.*

<sup>3</sup>No. 3.

*Temporary appointment of Ordinary Member of Governor General's Executive Council.*

A temporary vacancy having occurred in the office of an Ordinary Member of the Executive Council of the Governor General by the departure on leave of the Hon'ble Mr. A. B. [*or as the case may be*], the Governor General in Council is pleased, in pursuance of section 92 of the Government of India Act, 1915, (5 & 6 Geo. 5, c. 61)<sup>2</sup>, to appoint Mr. C. D. to act temporarily as an Ordinary Member of the said Council.

<sup>1</sup> Cf. Home, Revenue and Agricultural Department's Notification No. 1180, dated the 12th July, 1880, *Gazette of India*, 1880, Pt. I, p. 362.

<sup>2</sup> See *ante*.

<sup>3</sup> Cf. Home Department's Notification No. 411, dated the 15th April, 1915, *Gazette of India*, 1915, Pt. I, p. 584, and No. 1088 in *Gazette of India, Extraordinary*, dated 5th July, 1915.

The Hon'ble Mr. C. D. has on this day taken upon himself the execution of the office under the usual salute.

Y. Z.,

*Secretary to the Government of India.*

<sup>1</sup>No. 4.

*Appointment of Vice-President of Governor General's Executive Council.*

In pursuance of section 38 of the Government of India Act, 1915 (5 & 6 Geo. 5, c. 61),<sup>2</sup> the Governor General is pleased to appoint the Hon'ble \_\_\_\_\_, being a member of his Executive Council, to be Vice-  
thereof.

President thereof in place of \_\_\_\_\_, deceased.  
thereof in place of \_\_\_\_\_ who has vacated that office.

Y. Z.,

*Secretary to the Government of India.*

<sup>3</sup>No. 5.

*Grant of leave to Ordinary Member of Governor General's Executive Council.*

In exercise of the power conferred by section 86 of the Government of India Act, 1915 (5 & 6 Geo. 5, c. 61), the Governor General in Council is pleased to grant to the Hon'ble Mr. A. B., an Ordinary Member of the Executive Council of the Governor General, leave of absence under medical certificate for a period of \_\_\_\_\_ months, with effect from the \_\_\_\_\_ instant, or any subsequent date on which he may avail himself of it.

Y. Z.,

*Secretary to the Government of India.*

<sup>1</sup> Cf. Legislative Department's Notification No. 22, dated the 14th April, 1916, in *Gazette of India*, 1916, Part I.

<sup>2</sup> See *ante*.

*Cf.* Home Department's Notification No. 1631-C., dated the 22nd March, 1915, *Gazette of India*, 1915, Pt. I, p. 472.

**<sup>1</sup>No. 6.***Notification appointing place for assembling of Governor General's Executive Council.*

In exercise of the power conferred by section 39 of the <sup>2</sup>Government of India Act, 1915 (5 & 6 Geo. 5, c. 61), the Governor General in Council is pleased to direct that the Executive Council of the Governor General shall assemble at , in the Presidency (or Province) of .

Y. Z.,

*Secretary to the Government of India.*

**<sup>3</sup>No. 7.***Notification appointing time and place for assembling of the Indian Legislative Council.*

In exercise of the power conferred by section 64 (1) of the <sup>2</sup>Government of India Act, 1915 (5 & 6 Geo. 5, c. 61), the Governor General in Council is pleased to appoint day, the , 19 , at 11 A.M., as the time, and the Council Chamber in the as the place, for a meeting of the Indian Legislative Council.

Y. Z.,

*Secretary to the Government of India.*

**<sup>4</sup>No. 8.***Nomination of Additional Member of the Indian Legislative Council.*

For the purposes of section 63 of the <sup>2</sup>Government of India Act, 1915 (5 & 6 Geo. 5, c. 61), and in pursuance of the provisions of Regulation I. B. of the Regulations for the nomination and election of Additional Members of the Legislative Council of the Governor General, the Governor

<sup>1</sup> Cf Home Department's Notification No. 137, dated the 28th March, 1918, *Gazette of India*, 1918, Pt. I, p. 456.

<sup>2</sup> See *ante*.

<sup>3</sup> Cf. Legislative Department's Notification No. 59, dated the 29th November, 1916, *Gazette of India*, 1916, Pt. I.

<sup>4</sup> Cf. Legislative Department's Notification No. 28, dated the 9th August, 1917, *Gazette of India*, 1917, Pt. I, and No. 37, dated the 26th July, 1916, *ibid*, 1916, Pt. I.

General is pleased to nominate Mr. A. B., being a non-official (*or as the case may be*), to be an Additional Member [during the September Session] of the said Council, in the said Act referred to as the Indian Legislative Council.

Y. Z.,

*Secretary to the Government of India.*

*(Another form, to fill a casual vacancy.)*

For the purposes of section 63 of the <sup>1</sup>Government of India Act, 1915 (5 & 6 Geo. 5, c. 61), and in pursuance of the provisions of Regulation XI of the Regulations for the nomination and election of Additional Members of the Legislative Council of the Governor General, the Governor General is pleased to nominate Mr. A. B., being a non-official [*or as the case may be*], to be an Additional Member of the said Council (in the said Act referred to as the Indian Legislative Council), *vice* Sir C. D., resigned.

Y. Z.,

*Secretary to the Government of India.*

*(Another form.)<sup>2</sup>*

For the purposes of section 63 of the <sup>1</sup>Government of India Act, 1915 (5 and 6 Geo. 5, c. 61), and in pursuance of the provisions of clause (b) of Regulation I. B. of the Regulations for the nomination and election of Additional Members of the Legislative Council of the Governor General, the Governor General is pleased to nominate the following non-official persons, who have been selected from the classes mentioned opposite their respective names, to be Additional Members of the said Council, in the said Act referred to as the Indian Legislative Council :—

Names.	Classes.
A. B.	The Muhammadan Community in the Punjab.
C. D.	The Landholders in the Punjab.
E. F.	The Indian Commercial Community.

Y. Z.,

*Secretary to the Government of India.*

<sup>1</sup> See *ante*.

<sup>2</sup> Cf. Legislative Department's Notification No. 36, dated 26th July, 1916. *Gazette of India*, 1916, Pt. I.

<sup>1</sup>No. 9.*Publication of election of Additional Member of the Indian Legislative Council.*

In accordance with the provisions of the Regulations for the nomination and election of Additional Members of the Legislative Council of the Governor General the names of the following candidates, elected to be Additional Members of the Council by the electorates mentioned opposite their respective names, are hereby published.

Names of candidates.

Electorates.

Y. Z.,

*Secretary to the Government of India.**(Another form.)*<sup>2</sup>

In pursuance of the provisions of Regulation XI of the Regulations for the nomination and election of Additional Members of the Legislative Council of the Governor General, the non-official Members of the Council of the [Lieutenant-] Governor of        have elected the Hon'ble A. B. to be an Additional Member of the said Council, *vice* C. D., deceased.

Y. Z.,

*Secretary to the Government of India.*<sup>3</sup>No. 10.*Resignation of Additional Member of the Indian Legislative Council.*

The Governor General is pleased to accept the resignation by the Hon'ble Mr. A. B. of his office of Additional Member of the Indian Legislative Council.

Y. Z.,

*Secretary to the Government of India.*


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<sup>1</sup> *Cf.* Legislative Department's Notification No. 38, dated the 26th July, 1916, *Gazette of India*, 1916, Pt. I.

<sup>2</sup> *Cf.* Legislative Department's Notification No. 14, dated the 16th March, 1915, *Gazette of India*, 1915, Pt. I.

<sup>3</sup> *Cf.* Legislative Department's Notification No. 31, dated the 29th August, 1917, *Gazette of India*, 1917, Pt. I, and see s. 93 (1) of the Government of India Act, 1915, *ante*.

## No. 11.

*Summons issued to Members at beginning of each Session of the Indian Legislative Council.*

The Governor General in Council having, in exercise of the power conferred by section 64 (1) of the Government of India Act, 1915 (5 & 6 Geo. 5, c. 61),<sup>1</sup> appointed       day, the       , 191       , at 11 A.M., as the time, and the Council Chamber in the       as the place, for a meeting of the Indian Legislative Council,

Your Excellency is  
Your Honour is hereby summoned to the said meeting at the time and place aforesaid.

By order of the Governor General in Council.

Y. Z.,

*Secretary to the Government of India.*

<sup>2</sup>No. 12.

*Passing of law by the Indian Legislative Council and assent of Governor General thereto.*

[Endorsed at end of Bill as passed.]

This Bill was passed at a meeting of the Indian Legislative Council on the       day of       191       .

C.,

*President [or Vice-President].*

I assent to this Bill.

C.,

*Viceroy and Governor General.*

*The       , 191       .*

(An authentic copy.)

Y. Z.,

*Secretary to the Government of India,  
Legislative Department.*

<sup>1</sup> See *ante*.

<sup>2</sup> See s. 68 of the Government of India Act, 1915, *ante*, and rule 34 of the *Rules for the Conduct of Legislative Business*, *ante*.

<sup>1</sup>No. 13.

*Passing of law by Local Legislative Council and assent of Governor (or. Lieutenant-Governor), and of Governor General thereto.*

[Endorsed at end of Bill as passed.];

This Bill was passed by the Legislative Council on the , 191 .

A. B.,

*President [or Vice-President.]*

I assent to this Bill,

A. B.,

[Lieutenant-] Governor.

The , 191 .

(True copy.)

D. E.,

*Secretary to the Legislative Council.*

I assent to this Law.

C.,

*Viceroy and Governor General.*

The , 191 .

(An authentic copy.)

Y. Z.,

*Secretary to the Government of India,  
Legislative Department.*

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No. 14.

*Making and promulgation of an Ordinance under section 72 of the Government of India Act, 1915.<sup>2</sup>*

WHEREAS it is expedient to prohibit the practice of in the Presidency of ;

And whereas, pending the consideration and enactment by the Governor in Council of a law to effect this object, an

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<sup>1</sup> See s. 81 of the Government of India Act, 1915, *ante*.

<sup>2</sup> See *ante*.

emergency has arisen which makes it expedient to prohibit such by an Ordinance under section 72 of the Government of India Act, 1915 ;<sup>1</sup>

Now, therefore, in exercise of the power conferred by the said section, the Governor General is pleased to make and promulgate the following Ordinance :—

[Here follows the Ordinance.]<sup>2</sup>

Y. Z.,

*Secretary to the Government of India.*

(Another form.):

WHEREAS an emergency has arisen which renders it necessary to provide power for enforcing the attendance of witnesses at inquiries held into any matters relating to, or connected with, elections to the Indian Legislative Council and for other purposes in connection with such inquiries ;

Now, therefore, in exercise of the power conferred by section 72 of the Government of India Act, 1915,<sup>1</sup> the Governor General is pleased to make and promulgate the following Ordinance :—

[Here follows the Ordinance.]<sup>2</sup>

#### **<sup>4</sup>No. 15.**

#### *Proclamation constituting Executive Council of a Lieutenant-Governor.*

In exercise of the power conferred by sub-section (1) of section 55 of the Government of India Act, 1915 (5 & 6 Geo. 5, c. 61),<sup>1</sup> the Governor General in Council, with the approval of the Secretary of State for India in Council, is pleased to issue the following Proclamation :—

#### **PROCLAMATION.**

1. A Council shall be constituted in the Province of \_\_\_\_\_ with effect from the \_\_\_\_\_ day of \_\_\_\_\_

<sup>1</sup> See *ante*.

<sup>2</sup> Cf. Bengal Cotton Gambling Ordinance, 1912, dated 13th December 1912, which was superseded by Bengal Act 4 of 1913.

<sup>3</sup> Cf. The Indian Legislative Council (Election Inquiries) Ordinance, 1916 (VIII of 1916), dated 26th December, 1916, which has expired.

<sup>4</sup> Cf. Home Department's Notification No. 1628, dated 1st August, 1912, creating an Executive Council for Bihar and Orissa.



for the purpose of assisting the Lieutenant-Governor in the executive government of the Province.

2. The number of the Members of the Council shall be three, or such other number, not exceeding four, as the Governor General in Council may from time to time determine.

3. (1) Two Members of the Council shall be persons who at the time of their appointment have been in the service of the Crown in India for at least twelve years.

(2) The other Member or Members shall be either persons so qualified, or persons who at the time of their appointment have resided in India for at least twelve years.

4. If a Member is absent from illness or otherwise, the Lieutenant-Governor may, subject to the condition prescribed by sub-clause (1) of clause 3, appoint a person qualified under that clause to be a temporary Member during such absence.

5. In any case which, in the judgment of the Lieutenant-Governor, is of high importance and essentially affects the public interest and welfare, the Lieutenant-Governor may direct that such case shall be decided in accordance with his opinion, the opinion of the majority of the Council to the contrary notwithstanding.

6. (1) Where the Lieutenant-Governor makes a direction under clause 5, he shall record a statement of his reasons for making such direction, and any dissentient Member may record a statement of the reasons for his dissent.

(2) A copy of every statement recorded under clause (1) of this rule shall forthwith be submitted to the Governor General.

7. Save as provided in clause 5, the opinion of the majority of the Council shall prevail; and, in the case of equality of votes, the Lieutenant-Governor shall have a second or casting vote.

8. If the Lieutenant-Governor is obliged to absent himself from any meeting of the Council, from indisposition or any other cause, all the functions which are exercisable in Council by the Lieutenant-Governor shall be discharged by the Vice-President of the Council appointed under section 56 of the <sup>1</sup>Government of India Act, 1915.

Y. Z.,

*Secretary to the Government of India.*

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<sup>1</sup> See ante.

**<sup>1</sup>No. 16.***Appointment of Members of Executive Council of a Lieutenant-Governor.*

In exercise of the power conferred by section 55 (3) of the Government of India Act, 1915 (5 & 6 Geo. 5, c. 61),<sup>2</sup> the Governor General, with the approval of His Majesty the King, Emperor of India, is pleased to appoint the following gentlemen to be Members of the Council constituted in the Province of Bihar and Orissa for the purpose of assisting the Lieutenant-Governor in the executive government of that province:—

A. B.

C. D.

E. F.

Y. Z.,

*Secretary to the Government of India.***<sup>3</sup>No. 17.***Notification publishing a Regulation made under the Government of India Act, 1915.*

WHEREAS by a Resolution passed by the Secretary of State for India in Council on the                      day of 191   , the provisions of section 1 of the Government of India Act, 1870 (33 & 34 Vict., c. 3), were declared applicable to                     , within the territories under the administration of the Governor of A. in Council,  
Lieutenant-Governor of B.,;  
Chief Commissioner of C.,

And whereas the said provisions were repealed and re-enacted by the Government of India Act, 1915 (5 & 6 Geo. 5, c. 61)<sup>2</sup>;

And whereas the said Governor  
Lieutenant-Governor  
Chief Commissioner has proposed to the Governor General in Council a draft of the following Regulation, together with reasons for proposing the same;

<sup>1</sup> Cf. Home Department's Notification No. 1629, dated 1st August, 1912.

<sup>2</sup> See *ante*.

<sup>3</sup> Cf. The Arakan Hill District Laws Regulation, 1916 (I of 1916), *Gazette of India*, 1916, Pt. I, pp. 348—350; also *Burma Gazette*, 1916, Pt. II, pp. 391—394. The Statute requires publication in both the *Gazette of India* and the local official Gazette—see *ante*.

And whereas the Governor General in Council has taken the draft and reasons into consideration, and has approved of the draft, and the same has received the assent of the Governor General on the \_\_\_\_\_ day of \_\_\_\_\_ 191 ;

In pursuance of the direction contained in section 71 of the last mentioned Act, the said Regulation is now published in the *Gazette of India* :

REGULATION NO. \_\_\_\_\_ OF 191 .

[Here follows the Regulation.]

Y. Z.,

*Secretary to the Government of India.*

### **<sup>1</sup>No. 18.**

#### *Report of Select Committee.*

WE, the undersigned, Members of the Select Committee to which the Bill to \*

\* \* \*

Here describe in order was referred, have considered the the Papers to the Bill. Bill, and the papers noted in the margin, and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

\* \* \* \*

\* \* \* \*

We think that the Bill has [not] been so altered as to require re-publication, [and we recommend that it be passed as now amended].<sup>2</sup>

The publication<sup>3</sup> ordered by the Council has been made as follows :—

#### *In English.*

<i>Gazette.</i>						<i>Date.</i>
Gazette of India . . .	.	.	.	.	.	, 191 .
Gazette . . .	.	.	.	.	.	, 191 .
* * *	*	*	*	*	*	*

<sup>1</sup> See r, 25 of the *Rules of Legislative Business*, ante.

<sup>2</sup> See *ibid.*

<sup>3</sup> See r. 25, § 4, of the *Rules of Legislative Business*, ante.

*In the Vernaculars.*

<i>Province.</i>	<i>Language.</i>	<i>Date.</i>
Bengal	Bengali . . .	, 191 ,
	Hindi . . .	, 191 .

A. B.<sup>1</sup>

C. D.

E. F.

G. H.

I. J.

*The* , 191 .

[Here follows the Bill as amended.]

Y. Z.,

*Secretary to the Government of India.*

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No. 19.*Report of Proceedings of the Indian Legislative Council.*

PROCEEDINGS OF THE INDIAN LEGISLATIVE  
COUNCIL ASSEMBLED UNDER THE PRO-  
VISIONS OF THE GOVERNMENT OF INDIA  
ACT, 1915 (5 & 6 GEO. V, CH, 61).

The Council met at the Council Chamber at Viceregal  
Lodge, Simla, on Tuesday, the 19th September, 1916.

## PRESENT.

His Excellency Baron Chelmsford, P.C., G.M.S.I.,  
G.M.I.E., G.C.M.G., Viceroy and Governor General, *presid-*  
*ing*, and 52 Members, of whom 45 were Additional Members.

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<sup>1</sup> The practice is for the Member in charge of the Bill to sign first and for the other Members of the Select Committee to sign next in order of precedence. But it would seem more appropriate if the signature of the Law Member, who is the Chairman of every Select Committee, were to take precedence.

## OATH OF OFFICE.

The following Additional Members made the prescribed oath or affirmation of allegiance to the Crown :—

THE HON'BLE MR. DINSHAW EDULJI WACHA.

„ RAJA SIE MUHAMMAD ALI MUHAMMAD  
KHAN, K.C.I.E., KHAN BAHADUR, OF  
MAHMUDABAD.

„ NAWAB SAIYID NAWAB ALI CHAUDHURI,  
KHAN BAHADUR.

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 QUESTIONS AND ANSWERS.

The Hon'ble Khan Zulfikar Ali Khan asked :—

[Here follows the Question.]

The Hon'ble Sir Reginald Craddock replied :—

[Here follow the Reply and then the rest of the Questions and Replies.]

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 THE AMENDING BILL.

THE HON'BLE MR. G. R. LOWNDES :—“ My Lord, I move for leave to introduce a Bill to amend certain enactments. The Bill is a short and unimportant one, making only certain formal amendments in various Acts, such as have to be introduced from time to time. The larger number of the proposed amendments are concerned with the creation of the Patna High Court under the recent Government of India Act, which necessitates certain amendments in the Criminal Procedure Code and in the Civil Procedure Code. I may add, for the information of Members, that if this motion is accepted, it is proposed that this Bill should be passed at the next sitting of this Council. I formally move, my Lord, to introduce the Bill.”

This motion was put and agreed to.

THE HON'BLE MR. G. R. LOWNDES :—“ My Lord, I beg to introduce the Bill, and to move that the Bill, together with the Statement of Objects and Reasons relating thereto, be published in the *Gazette of India* in English.”

The motion was put and agreed to.

### THE INLAND STEAM-VESSELS BILL.

THE HON'BLE MR. G. R. LOWNDES :—" My Lord, I move for leave to introduce a Bill to consolidate the enactments relating to Inland Steam-vessels. The principal Act, which is Act VI of 1884, has been amended by many Acts—seven, I think, in all, and three of these seven Acts have again been amended by other Acts. It is thought, therefore, that the time has now come to have a Consolidating Act. The present Act is not intended to make any alterations in the law, but merely to consolidate the existing enactments. I may add, for the information of Members, that it is not proposed to take this Bill into further consideration in this session, but, if the motion for introduction is agreed to, it will be left over till the Delhi Session."

The motion was put and agreed to.

THE HON'BLE MR. G. R. LOWNDES :—" My Lord, I beg to introduce the Bill, and to move that the Bill, together with the Statement of Objects and Reasons relating thereto, be published in the *Gazette of India*, in English, and in the local official Gazettes, except the Fort St. George Gazette, in English and in such other languages as the Local Governments think fit."

The motion was put and agreed to.

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### THE INDIAN LUNACY (AMENDMENT) BILL.

THE HON'BLE SIR REGINALD CRADDOCK :—" My Lord, I beg to move that the Bill to amend the Indian Lunacy Act, 1912, be taken into consideration. On the last occasion when the Bill was before the Council, I explained the reasons for the introduction of the Bill, and as no notice has been received of any amendments since the Bill has been put before the Council, I beg now to move that the Bill be taken into consideration."

The motion was put and agreed to.

THE HON'BLE SIR REGINALD CRADDOCK :—" My Lord, I beg to move that the Bill to amend the Indian Lunacy Act, 1912, be passed."

The motion was put and agreed to.

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### THE HINDU AND MUSSALMAN DISPOSITION OF PROPERTY BILL.

THE HON'BLE MR. MAHOMED ALI JINNAH :—" My Lord, on behalf of the Hon'ble Mr. Setalvad, I beg to present

the Report of the Select Committee on the Bill to enable Hindus and Mussalmans to make dispositions of property by transfer *inter vivos* or by will for the benefit of unborn persons.”

The Council adjourned to Wednesday, the 27th September, 1916.

SIMLA ;	}	A. P. MUDDIMAN, <i>Secretary to the Government of India, Legislative Department.</i>
The 22nd September, 1916.		

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### No. 20.

*Statement regarding the translation and publication by  
Local Governments of Acts of the Indian Legislative  
Council.*

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Nos. 1421—1431.

From—H. W. C. CARNDUFF, Esq., I.C.S.,  
*Deputy Secretary to the Government of India,  
Legislative Department,*

To—LOCAL GOVERNMENTS AND ADMINISTRATIONS.

*Simla, the 18th August, 1897.*

SIR,

I am directed to request that the half-yearly<sup>1</sup> statement required for the purpose of showing when translations of Acts of the Governor General in Council are published and made available for use by Government officials and the public may be submitted in future in the accompanying form.

2. It is unnecessary to refer in such statements to translations of modified editions of Acts.

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<sup>1</sup> Annual Statements only are now required—see Legislative Department letter Nos. 1030—1046, dated 14th July, 1901.

*Statement showing the dates on which translations of the Acts of the Governor General in Council affecting which were passed during the year ending on the 31st December, 19 , were published and became available for use by Government officials and the public.*

Year.	No.	Short title or subject.	Dates of publication of translations in local official Gazette.	Dates on which translations were made available for use by Government officers and for sale.	REMARKS.



<sup>1</sup>No. 21.

*List of Business pending in the Indian Legislative Council.*

**Statement of Legislative work pending on the  
191 .**

**PART I.****BILLS INTRODUCED IN COUNCIL.**

(*N.B.*—The numbers in column 1 correspond with the numbers in column 1 of the Concise Statement which should be referred to for details.)

Serial No.	Title of Bill.	Stage at which Bill is.
1	Indian Registration of Ships Bill	Preliminary Report of Select Committee presented on 16th March, 1900. Communication from India Office received; Maritime Governments were consulted and their replies have been received. A revised draft Bill has been prepared and is under consideration.
.	. . . . .	. . . . .
.	. . . . .	. . . . .
.	. . . . .	. . . . .

<sup>1</sup>See r. 38, *fourth*, of the *Rules of Legislative Business*, ante.

## PART I—contd.

## CONCISE STATEMENT SHOWING STAGE OF EACH BILL INTRODUCED IN COUNCIL.

Serial No.	Title of Bill.	Leave given to introduce.	Introduced.	Circulated for opinion.	TO WHOM SENT.		OPINIONS.		PUBLISHED.		Reference to Executive Department.	Referred to Committee.	Members of Committee.	Meeting of Committee.	Correspondence with Secretary of State.	Remarks.
					For opinion and publication.	For opinion only.	Due.	Received.	In English.	In Vernacular.						
1	To make better provision for the Registration of British Ships in British India.	14th July, 1899	14th July, 1899	15th July, 1899	Madras.	...		Madras, 13th October, 1899.	India, 15th July 1899.	.....	Finance and Commerce Department, 29th January, 1900.	5th January, 1900.	Hon'ble Mr. Dawkins; Hon'ble Mr. Mehta; Hon'ble Mr. Smeaton; Hon'ble Mr. Allan Arthur and Hon'ble Mr. Raleigh.	9th February, 1900, 13th March, 1900.	To Secretary of State, No. 58, dated 20th July, 1899. To Permanent Under-Secretary of State, No. 66, dated 22nd March, 1900. To ditto, No. 87, dated 31st May, 1900. From ditto, No. 88 (Revenue), dated 26th June, 1901. From ditto, No. 101 (Revenue), dated 13th June, 1902.	Preliminary Report of Select Committee presented, 28th March, 1900.
					Bombay	...		Bombay, 23rd October, 1899.	Madras, 25th July, 1899.							
					Bengal.	...	15th October, 1899.	Bengal, 4th January, 1900.	Bombay, 20th July, 1899.	Marathi, 24th Gujarati, August, Sundhi, 1899.						
					Burma.	...		Burma, 12th October, 1899.	Sind, 10th August, 1899.	Bengal, 6th August, 1899.						
						High Court, Calcutta.		High Court, 29th August, 1899.	Bengal, 26th July, 1899.	Bengal, 15th August, 1899.						

## PART II.

BILLS FOR THE INTRODUCTION OF WHICH LEAVE HAS BEEN GIVEN.<sup>1</sup>

Serial No.	Title of Bill.	Date of publication.	REMARKS.

## PART III.

BILLS PUBLISHED BY ORDER OF THE GOVERNOR GENERAL UNDER RULE 23 OF THE RULES OF LEGISLATIVE BUSINESS.<sup>2</sup>

Serial No.	Title of Bill.	Date of publication.	REMARKS.

<sup>1</sup> See r. 16 of the *Rules of Legislative Business*, ante.

<sup>2</sup> See *ante*.

PART IV.<sup>1</sup>

BILLS FOR THE PREPARATION OF WHICH INSTRUCTIONS HAVE  
BEEN RECEIVED.

Serial No.	Title of Bill.	From what Department.	Date of receipt.	REMARKS.
*	* * *	* * *	* *	* * *
*	* * *	* * *	* *	* * *
*	* * *	* * *	* *	* * *
18	Indian Forest (Amendment) Bill.	Revenue and Agri- culture.	24th Decem- ber, 1917.	Bill in type. Under dis- cussions in E x e c u t i v e Department.
*	* * *	* * *	* *	* * *
*	* * *	* * *	* *	* * *
*	* * *	* * *	* *	* * *

<sup>1</sup> Part IV is printed on yellow paper and treated as confidential, being attached only to the copies of the Statement supplied to the Members of the Executive Council.

ANNEXURE.<sup>1</sup>

*Bills which have been prepared by the Legislative Department for other Departments unofficially, and regarding which official instructions have not been received.*

Unofficial No.	Department.	Subject.	REMARKS.
* *	* *	* * *	* * * *
* *	* *	* * *	* * * *
* *	* *	* * *	* * * *
213 and 258 of 1909; 46 of 1910; 355, 456 and 464 of 1912.	Commerce and Industry.	Northern India Salt Bill.	Revised draft prepared by Inspector-General of Excise and referred to Local Governments for opinion, 7th June, 1911. Replies have been received and the draft Bill is under consideration.
* *	* *	* * *	* * * *
* *	* *	* * *	* * * *
* *	* *	* * *	* * * *

<sup>1</sup> This Annexure is printed on yellow paper and treated as confidential, being attached only to the copies supplied to the Members of the Executive Council.

